

EXHIBIT 3

(Redacted)

(Previously Filed Under Seal as DI 424-2)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

CASE NUMBER: 16-cv-1054 (WMW/DTS)

Fair Isaac Corporation, a Delaware corporation,
Plaintiff,
versus
Federal Insurance Company, an Indiana corporation,
and ACE American Insurance Company, a Pennsylvania
corporation,
Defendants.

VIDEOTAPED DEPOSITION OF EXPERT WITNESS

CHRIS BAKEWELL

TAKEN: 28 June 2019

BY: Jackie McKone

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 MERCHANT GOULD</p> <p>80 South Eighth Street, Suite 3200</p> <p>4 Minneapolis, Minnesota 55402</p> <p>PHONE: (612) 332-5300</p> <p>5 FAX: (612) 332-9081</p> <p>E-MAIL: hkliebenstein@merchantgould.com</p> <p>6</p> <p>BY: Heather Kliebenstein</p> <p>7 For the Plaintiff</p> <p>8</p> <p>9 FREDRIKSON BYRON</p> <p>200 South Sixth Street, Suite 4000</p> <p>10 Minneapolis, Minnesota 55402</p> <p>PHONE: (612) 492-7000</p> <p>11 FAX: (612) 492-7077</p> <p>E-MAIL: tfleming@fredlaw.com</p> <p>12</p> <p>BY: Terrence Fleming</p> <p>13 For the Defendants</p> <p>14</p> <p>15</p> <p>16 Also present:</p> <p>17 James Woodward, FICO</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22 Videographer: Kyle Peterson, Veritext</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 P R O C E E D I N G S</p> <p>2 The following is the videotaped deposition</p> <p>3 of expert witness Chris Bakewell taken at Merchant</p> <p>4 Gould, 80 South Eighth Street in Minneapolis,</p> <p>5 Minnesota commencing at 9:07 a.m. on 28 June 2019</p> <p>6 pursuant to notice.</p> <p>7 * * *</p> <p>8 (Whereupon material was marked for</p> <p>9 identification as Exhibit 522.)</p> <p>10 THE VIDEOGRAPHER: Good morning. We are</p> <p>11 now going on the record. The time is 9:08 a.m.</p> <p>12 Today's date is June 28, 2019.</p> <p>13 Please note that the microphones are</p> <p>14 sensitive. They pick up whispering, private</p> <p>15 conversations, and cellular interference. Please</p> <p>16 turn off all cellphones or place them away from</p> <p>17 the microphones as they can interfere with the</p> <p>18 deposition audio. Audio and video recording will</p> <p>19 continue to take place unless all parties agree to</p> <p>20 go off the record.</p> <p>21 This is Media Unit 1 of the video recorded</p> <p>22 deposition of Chris Bakewell taken by counsel for</p> <p>23 the plaintiff in the matter of Fair Isaac</p> <p>24 Corporation versus Federal Insurance et al. filed</p> <p>25 in the United States District Court, District of</p>
<p style="text-align: right;">Page 3</p> <p>1 I N D E X</p> <p>2</p> <p>3 Examination by Ms. Kliebenstein, Page 5</p> <p>4</p> <p>5 E X H I B I T S</p> <p>6</p> <p>7 Exhibit 522 Bakewell report, Page 4</p> <p>8 Exhibit 523 Interrogatory answers, Page 91</p> <p>9 Exhibit 524 Flash drive, Page 102</p> <p>10 Exhibit 525 Native file, Page 103</p> <p>11 FED 017915_0001</p> <p>12 Exhibit 526 Zoltowski report, Page 140</p> <p>13</p> <p>14 PREVIOUSLY MARKED EXHIBITS</p> <p>15</p> <p>16 Exhibit 257 Negotiation options, Page 171</p> <p>17 Exhibit 409 Native file, Page 122</p> <p>18 FED 017882_0001-0020</p> <p>19 Exhibit 413 Native file, Page 136</p> <p>20 FED 017885_0001</p> <p>21 Exhibit 416 Native file, Page 131</p> <p>22 FED 17884_0001-0003</p> <p>23 Exhibit 418 Native file, Page 145</p> <p>24 FED 017883_0001-0004</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 Minnesota. This deposition is being held at</p> <p>2 Merchant and Gould PC located at 80 South Eighth</p> <p>3 Street, Suite 3200, in Minneapolis, Minnesota</p> <p>4 55402.</p> <p>5 My name is Kyle Peterson of Veritext Legal</p> <p>6 Solutions. I'm the videographer. The court</p> <p>7 reporter is Jackie McKone from the firm Veritext</p> <p>8 Legal Solutions. I am not authorized to</p> <p>9 administer an oath. I am not related to any party</p> <p>10 in this action or am I financially interested in</p> <p>11 the outcome.</p> <p>12 Counsel, will you please identify</p> <p>13 yourselves, and the parties you represent.</p> <p>14 MS. KLIEBENSTEIN: Heather Kliebenstein</p> <p>15 from Merchant and Gould from the plaintiff FICO.</p> <p>16 MR. FLEMING: Terry Fleming of the</p> <p>17 Fredrikson law firm representing defendants.</p> <p>18 THE VIDEOGRAPHER: Will the reporter please</p> <p>19 swear in the witness, and we can proceed.</p> <p>20 * * *</p> <p>21 CHRIS BAKEWELL</p> <p>22 after having been duly sworn deposes and says</p> <p>23 under oath as follows.</p> <p>24 * * *</p> <p>25 EXAMINATION</p>

<p style="text-align: right;">Page 6</p> <p>1 BY MS. KLIEBENSTEIN:</p> <p>2 Q. Good morning Mr. Bakewell. How are you today?</p> <p>3 A. Good morning. I'm fine. Thank you.</p> <p>4 Q. All right. So welcome to Minneapolis.</p> <p>5 A. Thank you.</p> <p>6 Q. What were you asked to do in this case?</p> <p>7 A. Well, it's outlined in my report, but at a high</p> <p>8 level, it's to assess damages and</p> <p>9 financial-related issues under the assumption of</p> <p>10 liability.</p> <p>11 Q. And what is the expertise that you're offering in</p> <p>12 this case?</p> <p>13 A. Well, I'm an expert in finance and valuation.</p> <p>14 I've quantified damages quite a few times. I'm an</p> <p>15 expert in particular area of valuation of</p> <p>16 intellectual property and intangible assets. I</p> <p>17 think those are primarily the skills that I bring.</p> <p>18 Q. And you're not an expert in software licensing; is</p> <p>19 that correct?</p> <p>20 A. So in this case -- I do have expertise in software</p> <p>21 licensing, but that's not the expertise that I'm</p> <p>22 being specifically asked to use.</p> <p>23 Q. And your expertise in software licensing that you</p> <p>24 just mentioned is that -- is that from serving as</p> <p>25 an expert witness in litigation?</p>	<p style="text-align: right;">Page 8</p> <p>1 responsible for all the systems integration over</p> <p>2 to SAP. We licensed SAP at the time and were</p> <p>3 moving all the enterprise stuff over.</p> <p>4 Q. And what were the years you were with Wartsila?</p> <p>5 Did I get that right?</p> <p>6 A. Wartsila. I think it was 1995 through about 2001.</p> <p>7 A little bit maybe longer on either side.</p> <p>8 Q. And what were the -- what were the revenues in</p> <p>9 general, the annual revenues -- you were -- you</p> <p>10 were the controller of the North American group;</p> <p>11 correct?</p> <p>12 A. That was one of the positions that I held.</p> <p>13 Q. One of the positions. What would you say the</p> <p>14 annual revenues were for that company while you</p> <p>15 were with it?</p> <p>16 A. The North American subsidiary, or for the entire</p> <p>17 company?</p> <p>18 Q. Why don't we do both.</p> <p>19 A. So the North American subsidiary our revenues were</p> <p>20 500 to \$800 million dollars per year, and the</p> <p>21 corporation was, like, between I'd say 3 and \$4</p> <p>22 billion. Something like that.</p> <p>23 Q. What is your experience in the insurance industry?</p> <p>24 A. I've worked on matters as a consultant in the</p> <p>25 insurance industry. I had a matter not long ago</p>
<p style="text-align: right;">Page 7</p> <p>1 A. Well, I've worked for a company for eight years,</p> <p>2 and I was the CFO of some businesses, and I was</p> <p>3 responsible for licensing the software that we</p> <p>4 used in the enterprise, and then throughout my</p> <p>5 career as a consultant, I've been involved in</p> <p>6 issues that relate software licensing and</p> <p>7 valuation, including in the context of damages but</p> <p>8 also consulting projects.</p> <p>9 I have a professional designation,</p> <p>10 certified licensing professional, and in part, the</p> <p>11 award of that is based on my experience in -- in</p> <p>12 licensing, including licensing software.</p> <p>13 Q. And your experience with that company for eight</p> <p>14 year what was that company?</p> <p>15 A. The name of the company was Wartsila,</p> <p>16 W-A-R-T-S-I-L-A.</p> <p>17 Q. You were the CFO?</p> <p>18 A. I was the CFO of our investment group, not of the</p> <p>19 corporation. I was the controller of North</p> <p>20 America, which was the biggest subsidiary at the</p> <p>21 time, and I had some other responsibilities. I</p> <p>22 was a controller and I forget exactly what my</p> <p>23 title was of -- of a business that we acquired and</p> <p>24 we turned into what we call our peer energy</p> <p>25 business. That was in Amsterdam, and I was</p>	<p style="text-align: right;">Page 9</p> <p>1 for a company called Great West, another insurance</p> <p>2 company, and I've had other assignments kind of</p> <p>3 here and there throughout my career.</p> <p>4 Q. And that's as a consultant in the financial space?</p> <p>5 A. Yes.</p> <p>6 Q. In preparing your opinions, did you presume</p> <p>7 liability?</p> <p>8 A. Yes.</p> <p>9 Q. Did you make any presumptions about burdens of</p> <p>10 proof with respect to damages? And we can start</p> <p>11 with -- let's start with lost license, or the</p> <p>12 breach of contract damages. Did you make any</p> <p>13 presumptions about who has the burden of proof?</p> <p>14 A. Well, my understanding would have been outlined in</p> <p>15 -- in my report in detail, which I don't have a</p> <p>16 copy of yet. You have one sitting right there.</p> <p>17 Q. I have marked as Exhibit 522 a copy of your</p> <p>18 report.</p> <p>19 A. Thank you.</p> <p>20 Q. And this is a copy of your report with all of the</p> <p>21 exhibits and schedules; correct?</p> <p>22 A. Well, I'll accept your representation that that's</p> <p>23 so. It appears to be. That's my answer. Period.</p> <p>24 Q. So then I'll go back to my question. What</p> <p>25 presumptions did you make about the -- the burdens</p>

<p style="text-align: right;">Page 10</p> <p>1 of proof with respect to breach of contract 2 damages? 3 A. Well, generally speaking, in terms of breach of 4 contract damages, I understand that it's your 5 burden. It's the plaintiff's burden. Generally 6 speaking. 7 Q. Okay, and what about with respect to actual 8 damages for copyright infringement? 9 A. As -- are you distinguishing actual damages from 10 disgorgement or -- 11 Q. I am. 12 A. So actual damages my understanding -- we can try 13 to find this in my report, but I think just from 14 memory -- 15 MR. FLEMING: Object to the extent it calls 16 for a legal conclusion. 17 THE WITNESS: From memory, generally 18 speaking, I understand that to be your burden, but 19 let me see here. I have this outlined on -- my 20 understanding of it on Pages 31 and 32. I'm 21 making assumptions as a damages expert and not as 22 a lawyer. 23 BY MS. KLIEBENSTEIN: 24 Q. Okay. That's your -- that's your answer. 25 With respect to copyright disgorgement, did</p>	<p style="text-align: right;">Page 12</p> <p>1 not get caught up in whose -- what's burden -- 2 whose burden is what. 3 Q. Understood. So we talked about proof of revenues, 4 nexus, costs would be either, and then there's a 5 third element that I see in Paragraph 106 that at 6 the very end of that italicized paragraph I see 7 the phrase, "Elements of profitable," -- "profit 8 attributable to factors other than the copyright 9 at work." 10 What was your assumption regarding whose 11 burden it was to prove elements of profit 12 attributable to factors other than the copyright 13 at work? 14 MR. FLEMING: Objection to the extent it 15 calls for a legal conclusion. 16 THE WITNESS: My understanding, not as a 17 lawyer but as a practitioner, is that this relates 18 to two issues, two words where I think that 19 there's some overlap between what I understand and 20 where I understand the law to be, and where 21 finance and economics are, and those words are 22 nexus and apportionment, and I think that there's 23 an obligation for a practitioner in my field to 24 insure that the analysis has a nexus to something 25 that is defined and that you apportion so that you</p>
<p style="text-align: right;">Page 11</p> <p>1 you make any presumptions about burdens of proof 2 with respect to copyright disgorgement? 3 MR. FLEMING: Objection to the extent it 4 calls for legal conclusion. 5 THE WITNESS: Again, you're saying 6 presumptions, and I'm responding and saying 7 assumptions that I'm making -- 8 BY MS. KLIEBENSTEIN: 9 Q. Sure. 10 A. -- because I'm not a lawyer. So I only make 11 assumptions about what the applicable framework 12 is, and my understanding is as a -- as a damages 13 expert that in terms of the burden, it is your 14 burden, the plaintiff's burden to identify proof 15 of revenues subject to there needing to be a nexus 16 to the allegations in the case, and then I think 17 there's some question as to sort of what the 18 burdens are for proving -- the costs you would 19 deduct from these revenues some people say, hey, 20 that's the defendant's burden. 21 My general understanding is though that 22 it's -- there could be more case law and nuances 23 involved in that, and in any event, it's -- I 24 regard it as something where Mr. Zoltowski and I 25 have an obligation to try to get things right and</p>	<p style="text-align: right;">Page 13</p> <p>1 present values that are reasonable and not 2 irrelevant and not misleading. 3 BY MS. KLIEBENSTEIN: 4 Q. So am I hearing you correct that the burden -- 5 your assumption was the burden of proof to prove 6 elements of profit attributable to factors other 7 than the copyright of work falls on both the 8 plaintiff and the defendant? 9 MR. FLEMING: Object to the extent ti calls 10 for lemon conclusion. 11 THE WITNESS: That's not what I said. 12 BY MS. KLIEBENSTEIN: 13 Q. Tell me how I got that wrong. 14 A. Because you used way less words than I did. I 15 explained that in a more detailed way. 16 Q. Other than the fact that I used fewer words, where 17 did I get it wrong? 18 A. You didn't use my words, and you oversimplified 19 what I said. I took, like, two or three 20 paragraphs to explain what my assumptions were, 21 and you tried to boil it down to four words, and 22 it's not correct. 23 Q. And my question is: Can you identify for me where 24 I got it wrong? 25 MR. FLEMING: Objection. Asked and</p>

<p style="text-align: right;">Page 14</p> <p>1 answered twice.</p> <p>2 THE WITNESS: Yes. You oversimplified it.</p> <p>3 BY MS. KLIEBENSTEIN:</p> <p>4 Q. Okay. In what way did I oversimplify it?</p> <p>5 MR. FLEMING: Objection. Asked and</p> <p>6 answered. Objection.</p> <p>7 THE WITNESS: You used too few of words,</p> <p>8 and you disregarded the detail of the answer that</p> <p>9 I provided by using too few words.</p> <p>10 BY MS. KLIEBENSTEIN:</p> <p>11 Q. The words nexus and attributable do those words</p> <p>12 mean different things to you in the context of</p> <p>13 copyright disgorgement?</p> <p>14 MR. FLEMING: Object to the extent it calls</p> <p>15 for legal conclusion.</p> <p>16 THE WITNESS: I'd have to know the context</p> <p>17 of how you're using those words.</p> <p>18 BY MS. KLIEBENSTEIN:</p> <p>19 Q. Well, you used those words in your prior answer</p> <p>20 and -- well, strike that.</p> <p>21 In the context of copyright disgorgement</p> <p>22 damages analyses, what does the word nexus mean to</p> <p>23 you in your professional judgment?</p> <p>24 A. I think that nexus means that you -- there needs</p> <p>25 to be some connection to the allegations and to</p>	<p style="text-align: right;">Page 16</p> <p>1 for a legal conclusion.</p> <p>2 THE WITNESS: Well, I think what you're</p> <p>3 referring to is I have a paragraph beginning with,</p> <p>4 "I further understand that," and then I go on and</p> <p>5 I cite to the code, US code, and that's what I</p> <p>6 understand and I'm assuming is the applicable</p> <p>7 standard. It also appears a couple other times in</p> <p>8 my report, that phrase, Paragraphs 104 and 105.</p> <p>9 BY MS. KLIEBENSTEIN:</p> <p>10 Q. Yes. I'm asking what you think that word means in</p> <p>11 your professional experience.</p> <p>12 MR. FLEMING: Same objection.</p> <p>13 THE WITNESS: Those words?</p> <p>14 BY MS. KLIEBENSTEIN:</p> <p>15 Q. The word attributable that appears in your report</p> <p>16 several times.</p> <p>17 A. Well, they mean what they mean in the context of</p> <p>18 each area that I've cited it. There's a couple</p> <p>19 places where it's used. One is profits of the</p> <p>20 infringer that are attributable to the</p> <p>21 infringement and are not taken into account in</p> <p>22 computing the actual damages, and another is --</p> <p>23 relates to elements of profit attributable to</p> <p>24 factors other than the copyrighted work, and so I</p> <p>25 think that what both of those terms generally try</p>
<p style="text-align: right;">Page 15</p> <p>1 whatever it is that you're trying to apply a</p> <p>2 valuation skill set to. If you're a valuation</p> <p>3 professional.</p> <p>4 Q. You used the phrase some connection. Is that a</p> <p>5 precise percentage, or not?</p> <p>6 MR. FLEMING: Object to the extent it calls</p> <p>7 for a legal conclusion.</p> <p>8 THE WITNESS: I would need to know more</p> <p>9 about what it is that you're asking, or when --</p> <p>10 what the context is. I don't see it is as being</p> <p>11 anything where there's, like, a bright line rule,</p> <p>12 but I could see where there's some instances where</p> <p>13 there would be a percentage that could be derived.</p> <p>14 BY MS. KLIEBENSTEIN:</p> <p>15 Q. Instances where there could be a percentage</p> <p>16 derived, and I'm asking a slightly different</p> <p>17 question. When you use the phrase some</p> <p>18 connection, I understand that there -- strike</p> <p>19 that.</p> <p>20 Now moving to the word attributable, within</p> <p>21 the context of the phrase profit attributable to</p> <p>22 factors other than the copyright of work, in your</p> <p>23 experience as a damages expert, what does the word</p> <p>24 attributable mean to you in that context?</p> <p>25 MR. FLEMING: Object to the extent it calls</p>	<p style="text-align: right;">Page 17</p> <p>1 to go to is determining what the boundaries are,</p> <p>2 the economic boundaries are of whatever it is that</p> <p>3 is the intangible asset or intellectual property</p> <p>4 that you're trying to value.</p> <p>5 Q. And what paragraphs were you just looking at when</p> <p>6 you were answering that question?</p> <p>7 A. I was looking at Section 3.6 of my report, which</p> <p>8 is Paragraphs 103 through 107.</p> <p>9 Q. Okay. Is your opinion relating to disgorgement of</p> <p>10 profits is that based on the presumption that you</p> <p>11 believe that -- strike that.</p> <p>12 You believe that if FICO to receive the</p> <p>13 amounts set forth in Mr. Zoltowski's report for</p> <p>14 copyright infringement disgorgement of profits</p> <p>15 that FICO would be receiving a windfall; is that</p> <p>16 correct?</p> <p>17 A. I say that in several places. Yes.</p> <p>18 Q. So that's your opinion?</p> <p>19 A. Yes. I think that the numbers he quantified would</p> <p>20 represent a windfall.</p> <p>21 Q. And is it your opinion that in connection with</p> <p>22 copyright disgorgement that FICO should receive no</p> <p>23 more than the value Federal received from the</p> <p>24 alleged infringement?</p> <p>25 A. Where do you -- where are you reading from? Is</p>

<p style="text-align: right;">Page 18</p> <p>1 there a place in my report that I said that?</p> <p>2 Q. You know, I don't know that you expressly said</p> <p>3 that. So I'm just trying to test the boundaries</p> <p>4 of how I understand your opinion, and I understand</p> <p>5 the windfall aspect, and so I'm trying to</p> <p>6 understand what the -- what the financial and</p> <p>7 economic underpinnings of your -- the way that you</p> <p>8 approached your work in this case.</p> <p>9 So I asked you about the windfall. The</p> <p>10 question I asked is: Your opinions relating to</p> <p>11 disgorgement damages are they based on the</p> <p>12 presumption that FICO should receive no more than</p> <p>13 the value received by Federal from the alleged</p> <p>14 infringement?</p> <p>15 MR. FLEMING: Objection. Vague.</p> <p>16 THE WITNESS: I don't recognize the -- that</p> <p>17 phrase or term.</p> <p>18 BY MS. KLIEBENSTEIN:</p> <p>19 Q. Okay. So your answer is no?</p> <p>20 A. No. That's not my answer. I just said I didn't</p> <p>21 recognize that phrase or term. That's different</p> <p>22 than the terminology that I used in my report.</p> <p>23 Q. And that may be so, but I'm asking you to -- well,</p> <p>24 you did the work for your report; right?</p> <p>25 A. Sure.</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. At Paragraph 158 in your report, in the second</p> <p>2 line, I see the phrase "financial and economic</p> <p>3 nexus," and I'm wondering with regard to the</p> <p>4 phrase financial nexus, what does that mean within</p> <p>5 the context of your report?</p> <p>6 A. Well, it means what I describe throughout my</p> <p>7 report, but if you want to substitute another word</p> <p>8 to help in the understanding, I think that another</p> <p>9 word would be connection. There needs to be some</p> <p>10 sort of connection.</p> <p>11 Another phrase that might be helpful is you</p> <p>12 need to define the economic boundaries of what it</p> <p>13 is that your math yields and connect that to</p> <p>14 whatever the claims are that are being made in the</p> <p>15 case. That's how I think about nexus.</p> <p>16 Q. Financial nexus?</p> <p>17 A. I think so.</p> <p>18 Q. So what about economic nexus; what is your</p> <p>19 definition of economic nexus?</p> <p>20 A. It would be the same. I'm using that -- I think</p> <p>21 the fields of finance and economics are closely</p> <p>22 related, and I'm using that I think to --</p> <p>23 interchangeably there.</p> <p>24 Q. So why didn't you just use the word nexus instead</p> <p>25 of financial and economic nexus?</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. What is it about that question that's difficult to</p> <p>2 answer?</p> <p>3 A. It's not difficult. I thought I gave you a clear</p> <p>4 answer. I didn't recognize that from my report.</p> <p>5 Q. Okay. So if it -- if it's not in your report,</p> <p>6 you're not going to answer the question?</p> <p>7 A. No. I didn't say that at all. I just said that I</p> <p>8 didn't recognize that from my report. I took the</p> <p>9 time to explain my understanding of the law and to</p> <p>10 explain my understanding of the standards that are</p> <p>11 required for Mr. Zoltowski or I to arrive at a</p> <p>12 reasonable and reliable conclusion from -- in</p> <p>13 terms of the field that we practice in and where</p> <p>14 we're experts, and I provided that level of detail</p> <p>15 in my -- in my report.</p> <p>16 Q. Okay. So you can't answer that question one way</p> <p>17 or the other?</p> <p>18 MR. FLEMING: Objection. Misstates the</p> <p>19 testimony.</p> <p>20 THE WITNESS: I think I did answer the</p> <p>21 question. I don't understand why you're saying</p> <p>22 that I -- I'm not answering the question. I'm</p> <p>23 answering the question very directly.</p> <p>24 MS. KLIEBENSTEIN: Okay.</p> <p>25 BY MS. KLIEBENSTEIN:</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Because I think you could have -- it's possible</p> <p>2 that you could have a technical nexus, and I'm I</p> <p>3 think clarifying that this relates to the field of</p> <p>4 finance, and valuation, and economics.</p> <p>5 Q. So what's a technical nexus?</p> <p>6 A. Sometimes technical experts are asked to do</p> <p>7 comparisons or make connections using their skill</p> <p>8 sets.</p> <p>9 Q. And in that last sentence of 158, you write, "I</p> <p>10 understand that any profits of the infringer must</p> <p>11 be attributable to the infringement. Mr.</p> <p>12 Zoltowski has not shown how this is so in his</p> <p>13 analysis."</p> <p>14 A. Correct.</p> <p>15 Q. Are you -- is your assumption that Mr. Zoltowski</p> <p>16 had -- had a -- had the burden to show profits of</p> <p>17 the infringer that are attributable to the</p> <p>18 infringement?</p> <p>19 MR. FLEMING: Objection. Calls for legal</p> <p>20 conclusion.</p> <p>21 THE WITNESS: No. I wouldn't say that</p> <p>22 that's the assumption that I made.</p> <p>23 BY MS. KLIEBENSTEIN:</p> <p>24 Q. I understand from your report that you disagree</p> <p>25 with Mr. Zoltowski's figures for lost license fees</p>

<p style="text-align: right;">Page 22</p> <p>1 for breach of contract; is that right?</p> <p>2 A. There's a lot of things that I said I disagree</p> <p>3 with. Sure.</p> <p>4 Q. Well, that's just one part; right?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. So focusing on the breach of contract, I</p> <p>7 want to understand -- I'm trying to understand</p> <p>8 where you're serving in a responsive rebuttal role</p> <p>9 and where you have affirmative opinions.</p> <p>10 Does your report contain an opinion as to</p> <p>11 what you believe is the proper framework to assess</p> <p>12 breach of contract damages?</p> <p>13 MR. FLEMING: Can you repeat the question</p> <p>14 please?</p> <p>15 MS. KLIEBENSTEIN: I can just ask it again.</p> <p>16 I'll wait until Mr. Bakewell is ready.</p> <p>17 THE WITNESS: I'm -- what -- he asked you</p> <p>18 to repeat the question?</p> <p>19 MS. KLIEBENSTEIN: Yeah. I'll ask it again</p> <p>20 when you're ready.</p> <p>21 THE WITNESS: Oh sure. Go ahead.</p> <p>22 MS. KLIEBENSTEIN: Now it scrolled all the</p> <p>23 way down. Yeah. Just read it.</p> <p>24 (Whereupon the material was read by the</p> <p>25 shorthand reporter.)</p>	<p style="text-align: right;">Page 24</p> <p>1 A. We can call it that if you like.</p> <p>2 Q. Sure.</p> <p>3 A. I'll accept that.</p> <p>4 Q. Okay, and my question is: Do you have an opinion</p> <p>5 that a different framework should be used in this</p> <p>6 case?</p> <p>7 A. Well, there's two parts to my answer there. First</p> <p>8 of all, I think the form is less important than</p> <p>9 the substance, and so whether it's a license where</p> <p>10 there's named applications or it's an enterprise</p> <p>11 license, that's less important to me than trying</p> <p>12 to get at the value of what it is that is the --</p> <p>13 is the focus of the wrongdoings as alleged, and</p> <p>14 the second part of my answer is I think that</p> <p>15 Doctor Kursh has some opinions that respond to Mr.</p> <p>16 Zoltowski on this and explain that Mr. Zoltowski's</p> <p>17 framework of named applications is unreasonable.</p> <p>18 I think that from a financial and economic</p> <p>19 perspective Mr. Zoltowski's focus on the form</p> <p>20 rather than the substance results in him making</p> <p>21 some errors and deviating from the -- the</p> <p>22 footprint, financial and economically, of what it</p> <p>23 is that he's -- that he's trying to measure.</p> <p>24 There's, like, a cascading effect from the</p> <p>25 error. So that's my response to your question.</p>
<p style="text-align: right;">Page 23</p> <p>1 THE WITNESS: I think that it does.</p> <p>2 BY MS. KLIEBENSTEIN:</p> <p>3 Q. Can you point me to where? Well, let me -- yeah.</p> <p>4 Why don't you direct me to where you're looking in</p> <p>5 your report.</p> <p>6 A. Well, two things. First of all, I'm describing</p> <p>7 and responding to what Mr. Zoltowski did, and I'm</p> <p>8 citing to his report, and I don't have his report.</p> <p>9 So it would be helpful to see that because I'm</p> <p>10 trying to make the same assumptions regarding the</p> <p>11 applicable standards, and then I think when you</p> <p>12 read my report, it's clear that Mr. Zoltowski is</p> <p>13 just by the name of what he's -- what we both</p> <p>14 framed his analysis as -- as well as what he does</p> <p>15 he's trying to do some sort of lost software fee</p> <p>16 or lost profits, which is a but-for type of</p> <p>17 analysis.</p> <p>18 Q. So separate from Mr. Zoltowski's opinion, what is</p> <p>19 your opinion on the proper framework for breach of</p> <p>20 contract? Is it -- is it enterprise? Is it named</p> <p>21 application? Is it something else?</p> <p>22 A. I don't understand your question.</p> <p>23 Q. Mr. Zoltowski put forth a named application</p> <p>24 damages analysis for the breach of contract claim;</p> <p>25 right?</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. Moving on to actual damages for copyright</p> <p>2 infringement, separate from disgorgement, does</p> <p>3 your report have a framework for what you see as</p> <p>4 the appropriate damages amount or actual damages?</p> <p>5 A. Well, the framework would be as -- as I outlined</p> <p>6 in Section 3.6, and then as I incorporated from</p> <p>7 reference to Mr. Zoltowski's report about what the</p> <p>8 framework is. So I do have a section on that,</p> <p>9 3.6.</p> <p>10 Q. I see your Section 3.6 on the overall general</p> <p>11 legal framework. My question was focused on the</p> <p>12 damages calculation for actual damages. Do you</p> <p>13 have an affirmative calculation for actual damages</p> <p>14 for copyright infringement?</p> <p>15 A. Let me see if I can find the spot in my report.</p> <p>16 This answer is a little more challenging for me</p> <p>17 because Mr. Zoltowski didn't really define what</p> <p>18 the copyrights are that he's trying to value, and</p> <p>19 so I'm trying to be as responsive to him and his</p> <p>20 analysis as I can.</p> <p>21 There's one place in my report that</p> <p>22 replicates the specific modules that Mr. Zoltowski</p> <p>23 identified, and I'm trying to find it. It's in</p> <p>24 26, Paragraph 26 where there's copyright</p> <p>25 registration numbers, a table of copyright</p>

<p style="text-align: right;">Page 26</p> <p>1 registration numbers. What I'm referring to here</p> <p>2 is that Mr. Zoltowski doesn't disaggregate his</p> <p>3 analysis in a way that's specific to each of these</p> <p>4 copyrights.</p> <p>5 Q. And why should Mr. Zoltowski have done that?</p> <p>6 A. Well, if he's going to use his financial and</p> <p>7 valuation skill set and offer numbers that he's</p> <p>8 going to refer to as values, which he clearly</p> <p>9 does, he needs to define what it is that he's</p> <p>10 valuing.</p> <p>11 Q. And you believe that what should be valued is the</p> <p>12 -- the registered works under the copyright</p> <p>13 registrations?</p> <p>14 A. If you're claiming to arrive at a value that's</p> <p>15 specific to the copyrights, there needs to be some</p> <p>16 sort of connection to the copyrights.</p> <p>17 Q. Do you have an understanding of what these</p> <p>18 copyright registrations identified in Paragraph 26</p> <p>19 cover?</p> <p>20 A. Yes.</p> <p>21 Q. What is that?</p> <p>22 A. It's what's described in the complaint. There's a</p> <p>23 typo here. It says, "Second and amended company."</p> <p>24 It should say complaint I think on Page 3. If you</p> <p>25 have the complaint, that's the understanding of</p>	<p style="text-align: right;">Page 28</p> <p>1 to correct for at least some of his errors.</p> <p>2 Q. And these --</p> <p>3 A. So that's why I say yes or no.</p> <p>4 Q. Okay, and the adjustments primarily were adding --</p> <p>5 adding a discount and modifying the number of</p> <p>6 applications at issue; am I right about that?</p> <p>7 A. No. I think his -- there's some other things that</p> <p>8 are -- that are there, but if you're talking about</p> <p>9 what is quantified in the schedules, like, 2 and</p> <p>10 2.1 for those corrections, I think you're</p> <p>11 capturing a bunch of them.</p> <p>12 Q. Are there any other quantifiable adjustments as --</p> <p>13 as it relates to actual damages for copyright</p> <p>14 infringement?</p> <p>15 A. Well, the main one is you reduce it to zero</p> <p>16 because Mr. Zoltowski hasn't defined what the</p> <p>17 copyrights are economically.</p> <p>18 Q. Does your report state anywhere that the actual</p> <p>19 damages FICO should receive for copyright</p> <p>20 infringement are zero?</p> <p>21 A. I think that I've said very clearly that Mr.</p> <p>22 Zoltowski didn't define what it is that he's</p> <p>23 valuing, and I think it follows from that that if</p> <p>24 there's -- if there's a lack of definition, it's</p> <p>25 zero or a null value, nothing's been identified.</p>
<p style="text-align: right;">Page 27</p> <p>1 the assumptions I made.</p> <p>2 Q. And in -- in your report, I don't see anywhere</p> <p>3 where you independently value the copyrighted</p> <p>4 works. Am I correct about that?</p> <p>5 A. Well, I haven't seen where those copyrights have</p> <p>6 been distinguished from anything else that is --</p> <p>7 that was licensed, and so I think you're right,</p> <p>8 and you're wrong.</p> <p>9 You're right in that I don't have a</p> <p>10 specific number for each of these copyrights, but</p> <p>11 that's because Mr. Zoltowski hasn't defined what</p> <p>12 these are economically, and I haven't seen any</p> <p>13 evidence that these are anything of substance</p> <p>14 economically. So there, there's no number.</p> <p>15 However, I think you can also assume, and</p> <p>16 as I wrote in my report, I've tried to make the</p> <p>17 assumption that let's -- let's assume that Mr.</p> <p>18 Zoltowski is correct and -- and if this is indeed</p> <p>19 his assumption, that the copyrights overlap</p> <p>20 conceptually with what is -- what the alleged</p> <p>21 wrongdoings are, that -- in other words, that the</p> <p>22 entirety of the -- of what's covered under the</p> <p>23 contract is also copyrighted, that they are</p> <p>24 coextensive, and under that scenario, I've made</p> <p>25 adjustments to what Mr. Zoltowski has done to try</p>	<p style="text-align: right;">Page 29</p> <p>1 I think I said that repeatedly.</p> <p>2 Q. You say repeatedly that the damages award should</p> <p>3 be zero?</p> <p>4 A. I didn't say that. I used that specific term, but</p> <p>5 I did say that he hasn't shown that there's a</p> <p>6 nexus. He hasn't defined what the copyrights are,</p> <p>7 and I think it follows from the fact that -- from</p> <p>8 an economic point of view what the copyrights are,</p> <p>9 and I think it follows from that -- that the</p> <p>10 number is either zero or it's not a number, it's a</p> <p>11 null value, that he has not done anything</p> <p>12 reliable, with all due respect, from a financial</p> <p>13 and economic point of view, and that results in a</p> <p>14 null value.</p> <p>15 Q. As far as quantifiable adjustments, other than the</p> <p>16 null value, those quantifiable adjustments are all</p> <p>17 reflected in Exhibits 2 through -- why don't you</p> <p>18 tell me.</p> <p>19 Other than the null value, can you identify</p> <p>20 for me where else your quantifiable adjustments</p> <p>21 are as it relates to actual damages for copyright</p> <p>22 infringement?</p> <p>23 A. Well, there's a variety of calculations starting</p> <p>24 at Exhibit 1 I think through -- I think through</p> <p>25 about Exhibit 10. Then there's some narratives in</p>

<p style="text-align: right;">Page 30</p> <p>1 my report where I describe some other things</p> <p>2 conceptually.</p> <p>3 Q. With regard to copyright disgorgement damages, I</p> <p>4 think that your report -- you opine that Mr.</p> <p>5 Zoltowski is wrong about his assessment of</p> <p>6 copyright damages for disgorgement; correct?</p> <p>7 A. That's one of the things that I said. Sure.</p> <p>8 Q. And now, again, I'm trying to understand your</p> <p>9 affirmative opinions as they relate to copyright</p> <p>10 disgorgement. Your report does not contain an</p> <p>11 opinion regarding whether any of Federal's profits</p> <p>12 have a connection to Blaze Advisor; is that</p> <p>13 correct?</p> <p>14 A. No. That's wrong.</p> <p>15 Q. Tell me why I'm wrong.</p> <p>16 A. I think the evidence shows that there is no</p> <p>17 connection, that -- I think I've explained at</p> <p>18 length, and I can do this without even looking at</p> <p>19 any parts of my report, how there isn't a</p> <p>20 connection between revenues and Blaze Advisor.</p> <p>21 It's not a software that I understand</p> <p>22 fundamentally is used to create revenues. There's</p> <p>23 no economic analysis or evidence that shows that</p> <p>24 it creates revenues.</p> <p>25 I think that conceivably there's</p>	<p style="text-align: right;">Page 32</p> <p>1 report for you.</p> <p>2 Q. I didn't understand something at the end of that</p> <p>3 answer. We were talking -- you were talking about</p> <p>4 market value, and then you said that that's</p> <p>5 subject to conducting some sort of analysis of</p> <p>6 what's attributable to the copyrighted works as</p> <p>7 opposed to other things.</p> <p>8 Is that analysis done at the application</p> <p>9 level, or in the insurance context the policy sale</p> <p>10 level? What were you referring to there?</p> <p>11 A. Well, I wasn't referring to anything that</p> <p>12 specific. What I was saying is what I said</p> <p>13 earlier, that if you have copyrights that</p> <p>14 conceivably those copyrights could be coextensive</p> <p>15 with the entire software product, although that's</p> <p>16 I think rarely the case that you can copyright</p> <p>17 something that is identical to economically what</p> <p>18 the product is that's sold, and so you need to</p> <p>19 define the boundaries of each and compare them and</p> <p>20 make a reduction that is specific to the</p> <p>21 copyrights. That's what I was referring to.</p> <p>22 Q. Okay. So is it your opinion in your report that</p> <p>23 there is zero connection between the gross written</p> <p>24 premiums at issue in this case and Blaze Advisor?</p> <p>25 A. I haven't seen anything that is -- that shows that</p>
<p style="text-align: right;">Page 31</p> <p>1 potentially some cost savings elements over, say,</p> <p>2 for example, doing the same work manually, but</p> <p>3 there's also substitute products that are</p> <p>4 available, and so I think that provides some</p> <p>5 indication of what the economic boundaries are of</p> <p>6 the -- of the software, and then I describe in my</p> <p>7 report how the value of software works, and I've</p> <p>8 confirmed that that's how it works in this field</p> <p>9 where you can assess income-generating</p> <p>10 opportunities, I call that the income approach, or</p> <p>11 attributes I should say instead of opportunities,</p> <p>12 cost savings versus alternatives, call that the</p> <p>13 cost approach, and then market-derived inputs were</p> <p>14 considerations that, in this industry, reflects</p> <p>15 the cost and the income approach is what I call</p> <p>16 fundamental economic attributes, and the value of</p> <p>17 software will tend to manifest in terms of market</p> <p>18 values, and -- and that's what I say would provide</p> <p>19 the best measure, but that's subject to conducting</p> <p>20 some sort of analysis of what's attributable to</p> <p>21 the copyrighted works as opposed to other things.</p> <p>22 So without doing another level of what I'll</p> <p>23 call apportionment here, that would yield an</p> <p>24 inflated results still. So I talk about that, and</p> <p>25 I basically just described the second half of my</p>	<p style="text-align: right;">Page 33</p> <p>1 there's a reliable connection other than</p> <p>2 conceivably the cost savings types of attributes</p> <p>3 that I described in my -- in my report.</p> <p>4 I think it's wrong frankly for Mr.</p> <p>5 Zoltowski to claim that there's a connection</p> <p>6 between all of the revenues and Blaze Advisor. I</p> <p>7 think it's -- wrong is -- I'm being polite.</p> <p>8 Q. So your answer was I haven't -- haven't seen</p> <p>9 anything that shows there is a reliable</p> <p>10 connection. Got it. Understood that. My</p> <p>11 question is a little bit different.</p> <p>12 Have you seen anything that shows you for</p> <p>13 sure 100 percent there's zero connection? Is that</p> <p>14 your opinion?</p> <p>15 MR. FLEMING: Objection to the first part</p> <p>16 of that before stating the question misstates his</p> <p>17 testimony.</p> <p>18 MS. KLIEBENSTEIN: I actually typed it out</p> <p>19 realtime so it's accurate.</p> <p>20 MR. FLEMING: Same objection.</p> <p>21 THE WITNESS: I don't understand your</p> <p>22 question.</p> <p>23 BY MS. KLIEBENSTEIN:</p> <p>24 Q. I mean, it's kind of a circumstantial versus</p> <p>25 direct question; right? So I can say that I've</p>

<p style="text-align: right;">Page 34</p> <p>1 seen something with my own eyes and I know for 100 2 percent that it's true versus I haven't seen 3 anything that disproves it, proves it one way or 4 the other. So my question is relating to that. 5 Your testimony was, "I haven't seen 6 anything that shows there is a reliable 7 connection," and I just want to confirm your 8 opinion one way or the other whether you 9 affirmatively believe 100 percent that there is 10 zero connection between the gross written premiums 11 at issue here and Blaze Advisor. 12 MR. FLEMING: Just to clarify, you had a 13 long lead-up to that question, and I'm assuming 14 the only thing that you're asking had nothing to 15 do with the lead-up but just the question itself; 16 correct? 17 MS. KLIEBENSTEIN: That's correct. I'm 18 just trying to get the context so we don't go 19 round and round on this for too long. 20 THE WITNESS: I have an open mind. I try 21 to consider, frankly, your perspective when I'm 22 assuming liability, and I haven't seen in Mr. 23 Zoltowski's report or the reports or declarations 24 of the experts that he's relying upon any sort of 25 reliable direct evidence of that type of value,</p>	<p style="text-align: right;">Page 36</p> <p>1 A. I think it depends on the context of the question 2 and which application that it is. 3 Q. So what about -- what about CSI Express? 4 A. What page of my report is that? 5 Q. I think you can look at Page 47. 6 MR. FLEMING: So just so that I'm clear, 7 when you say what about CSI Express, is that the 8 question -- 9 MS. KLIEBENSTEIN: I'll ask the question 10 again. 11 MR. FLEMING: Okay. 12 THE WITNESS: I didn't think there was a 13 question pending. That's why I was waiting. 14 BY MS. KLIEBENSTEIN: 15 Q. Page 47. 16 A. Okay. 17 Q. Are you there? 18 A. I am. It's right here. 19 Q. We were talking about your discussions with 20 Federal employees, and my question was: At the 21 application level, did -- did you speak with 22 anyone -- do you have an understanding one way or 23 another as to whether CSI Express contributes to 24 revenue in any way at Federal at the application 25 level?</p>
<p style="text-align: right;">Page 35</p> <p>1 and that's important to me because I'm assuming 2 that Mr. Zoltowski is able to do that, and the 3 fact that he didn't is to me direct evidence that 4 there isn't such a connection. So that's Part 1. 5 Part 2 is that I interviewed Mr. Kursh or 6 Doctor Kursh and Mr. McCarter about this, as well 7 as people at Federal, and they all told me that 8 there is no connection, and so that's another 9 category of direct evidence that there isn't a -- 10 a connection between revenues and Blaze Advisor. 11 So there's several categories of direct 12 evidence if you look at it that way, as I think 13 you're -- you described in your preamble to your 14 question that lead me to conclude that there 15 aren't any -- there isn't a revenue connection. 16 BY MS. KLIEBENSTEIN: 17 Q. What about the applications -- let me back up. 18 You understand that Blaze Advisor is used in 19 certain applications at Federal; correct? 20 A. Yes. 21 Q. Did you ask anybody at Federal whether the 22 applications that contain Blaze Advisor drove 23 revenue in any way? 24 A. Yes. 25 Q. And what was the answer?</p>	<p style="text-align: right;">Page 37</p> <p>1 MR. FLEMING: Okay. So the question is 2 whether he asked anybody at Federal that question? 3 MS. KLIEBENSTEIN: No. I'll ask it again. 4 BY MS. KLIEBENSTEIN: 5 Q. Mr. Bakewell, do you have an understanding one way 6 or the other as to whether CSI Express contributes 7 in any way at Federal to revenues at the 8 application level? 9 A. What do you mean revenues at the application 10 level? There are no revenues at the application 11 level. 12 Q. I'll ask it a different way. Do you have an 13 understanding one way or the other whether CSI 14 Express, the application, drives or contributes to 15 revenue in any way at Federal? 16 A. Yes. 17 Q. In what way? 18 A. It doesn't. 19 Q. And what is your source for that opinion? 20 A. That's what I've been looking for to see which 21 specific person I could cite you to based upon 22 what I've written. I don't know that I can give 23 you one particular person. 24 You can see in Paragraph 15 that I 25 interviewed a whole bunch of people, and the</p>

<p style="text-align: right;">Page 38</p> <p>1 questions that I asked were of this nature. I</p> <p>2 would think -- well, the person I would start with</p> <p>3 is Mr. Iannuzzi, and what -- what he told me is</p> <p>4 that it doesn't drive revenues.</p> <p>5 Q. And what was his -- what was his reasoning?</p> <p>6 A. Generally speaking, it's that it could be -- this</p> <p>7 is a -- it's something that could be replaced, and</p> <p>8 that it's the business process and not the</p> <p>9 software that -- and the business process</p> <p>10 including the people and their knowledge that</p> <p>11 drives revenues as well as the sort of historical</p> <p>12 business relationships, and the brand, and that</p> <p>13 the software just supports the business, the</p> <p>14 business first.</p> <p>15 Q. And your thoughts on CSI Express and whether it</p> <p>16 contributes in any way at Federal that's solely</p> <p>17 based on your conversation with Federal employees,</p> <p>18 including Mr. Iannuzzi?</p> <p>19 A. Iannuzzi, and no, it's not solely based on that.</p> <p>20 Q. What else is it based on?</p> <p>21 A. I've cited to a lot of documents. One that comes</p> <p>22 to mind is I have -- and Mr. Zoltowski had this</p> <p>23 too I think that Federal produced it, business</p> <p>24 process flow charts that describe how the</p> <p>25 technology is organized and how it supports a</p>	<p style="text-align: right;">Page 40</p> <p>1 to me, or others I followed up when they said, oh,</p> <p>2 now I understand your question, I'll look into</p> <p>3 that, and an example of that would be Mr. Pandey,</p> <p>4 Ramesh Pandey, and when they did that</p> <p>5 investigation, they said, you know Chris, you need</p> <p>6 to really -- and what I what I learned here from</p> <p>7 my research is we've got a business process, and</p> <p>8 then we've got some software that supports our</p> <p>9 business process, and really the business process</p> <p>10 is first, and then what Mr. Pandey said</p> <p>11 specifically, he's one of the people who gave me</p> <p>12 business process flow charts, he's, like, look,</p> <p>13 this Blaze stuff it's really just a small part of</p> <p>14 our business, not even business process, our</p> <p>15 technical footprint, and that's -- that led to</p> <p>16 some of the organization or flow charts, the flow</p> <p>17 charts that I understand have been produced.</p> <p>18 So that's -- that's why I was leaving some</p> <p>19 room in my answer.</p> <p>20 MR. FLEMING: When you come to a natural</p> <p>21 stopping point, I'd like to take a break. We've</p> <p>22 been going for over an hour.</p> <p>23 MS. KLIEBENSTEIN: Sure. Just a few</p> <p>24 minutes.</p> <p>25 BY MS. KLIEBENSTEIN:</p>
<p style="text-align: right;">Page 39</p> <p>1 business process, and I think that Mr. Zoltowski</p> <p>2 would have been well served to have spent more</p> <p>3 time trying to study those and understand them</p> <p>4 frankly. With all due respect.</p> <p>5 Q. I heard you say earlier that when I asked you</p> <p>6 about the different applications and whether they</p> <p>7 drive or contribute to revenue you said it depends</p> <p>8 on -- it depends. With the answer to CSI Express,</p> <p>9 can you identify any on this list that you have</p> <p>10 information that they could contribute to revenue?</p> <p>11 A. What I had in mind there in -- in leaving myself a</p> <p>12 little bit of room is that when I spoke with some</p> <p>13 people they described how making sound decisions</p> <p>14 can help, is helpful to the business, and they</p> <p>15 weren't able to provide any sort of specific</p> <p>16 measure or anything like that, but they -- from</p> <p>17 their perspective I think had sort of the same</p> <p>18 open mind that I did when I was investigating this</p> <p>19 issue that, hey, you know, if we make better</p> <p>20 decisions, I suppose maybe that might be a good</p> <p>21 thing, and maybe there's some connection to</p> <p>22 revenues, but I'm not in a position to really</p> <p>23 judge that, I'm more of a technical person, or I</p> <p>24 don't have the -- the seniority to really see</p> <p>25 that, and so some people did say things like that</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. So the applications that you understand from your</p> <p>2 interviews those enable business processes; did I</p> <p>3 get that right?</p> <p>4 A. No.</p> <p>5 Q. How did I get that wrong?</p> <p>6 A. I used a lot more words than that. I wouldn't say</p> <p>7 it that way.</p> <p>8 Q. Did that make it wrong though?</p> <p>9 A. Not always. Not always, but that really</p> <p>10 oversimplifies it, and I didn't say that there was</p> <p>11 a connection like that.</p> <p>12 Q. So the -- the applications are part of the</p> <p>13 business process; would you agree with that?</p> <p>14 A. They support a business process.</p> <p>15 Q. They support a business process, and what is your</p> <p>16 understanding of the business processes that these</p> <p>17 applications support?</p> <p>18 A. They are all different.</p> <p>19 Q. Correct, but do you -- can you -- can you name one</p> <p>20 of the business processes that these applications</p> <p>21 support?</p> <p>22 A. There's some underwriting functions that -- and</p> <p>23 some pricing functions.</p> <p>24 Q. Separate from the applications and separate from</p> <p>25 Blaze Advisor software, did you talk to anybody</p>

<p style="text-align: right;">Page 42</p> <p>1 about the business processes and whether those</p> <p>2 drive or contribute to revenue at Federal at all?</p> <p>3 A. I spoke with a lot of people about that.</p> <p>4 Q. Did you say about that?</p> <p>5 A. I did.</p> <p>6 Q. Okay. I just couldn't hear you, and what -- what</p> <p>7 did -- what were you told about the business</p> <p>8 processes that these applications support and</p> <p>9 whether they do or don't drive revenue?</p> <p>10 A. Well, every business is different, and the</p> <p>11 business process comes first, and the software</p> <p>12 that's used only supports the business process,</p> <p>13 and the business process is -- as I understand it</p> <p>14 have been developed over literally decades if not</p> <p>15 a century, and there's people that provide value</p> <p>16 too through their knowledge, and those are the</p> <p>17 aspects that really drive value at the business.</p> <p>18 Q. So you would agree that the business processes</p> <p>19 that the applications support do contribute to</p> <p>20 revenue at Federal?</p> <p>21 A. The business processes contribute to revenue.</p> <p>22 There's applications that support the business</p> <p>23 processes. There's all kind of applications, but</p> <p>24 it would be wrong to mix the two like you did in</p> <p>25 your answer, misleading, or in your</p>	<p style="text-align: right;">Page 44</p> <p>1 A. I don't think any do ultimately. I gave you I</p> <p>2 think more context for that in our prior</p> <p>3 discussion, but I think that if I had to boil it</p> <p>4 down, I would say no. I said that at the</p> <p>5 beginning of our discussion.</p> <p>6 Q. Does your report -- does your report express an</p> <p>7 opinion that all of Federal's revenues and profits</p> <p>8 are driven by something other than Blaze Advisor?</p> <p>9 A. I think yes and no is the answer to that question.</p> <p>10 Q. Explain that for me.</p> <p>11 A. I think that fundamentally it seems to be that way</p> <p>12 because of the reasons that I described for you</p> <p>13 earlier, that the business is a century old, it's</p> <p>14 complex, it involves people. I discuss a lot of</p> <p>15 this throughout my report just to try to give you</p> <p>16 as concise an answer as possible. I'll leave it</p> <p>17 there.</p> <p>18 I discussed earlier how your experts and</p> <p>19 designees have been unable to identify anything,</p> <p>20 despite that being their task, that is specific to</p> <p>21 any incremental revenues or profits.</p> <p>22 I discussed how I interviewed Doctor Kursh</p> <p>23 and Mr. McCarter, and their opinion is that there</p> <p>24 is no connection. So that's all falls in the</p> <p>25 category of zero or null or none, and then I also</p>
<p style="text-align: right;">Page 43</p> <p>1 1 re-characterization of my answer that you</p> <p>2 2 rephrased as a question. I think somebody had to</p> <p>3 3 use the restroom.</p> <p>4 4 Q. Just one second.</p> <p>5 5 A. Okay.</p> <p>6 6 MS. KLIEBENSTEIN: Okay. We can take a</p> <p>7 7 break.</p> <p>8 8 THE WITNESS: Thank you.</p> <p>9 9 THE VIDEOGRAPHER: We are going off the</p> <p>10 10 record. The time now is 10:14 a.m.</p> <p>11 11 (Whereupon a short break was taken from</p> <p>12 12 10:14 a.m. to 10:33 a.m.)</p> <p>13 13 THE VIDEOGRAPHER: We are back on the</p> <p>14 14 record. It this marks the beginning of Media 2 in</p> <p>15 15 the deposition of Chris Bakewell. The time now is</p> <p>16 16 10:34 a.m.</p> <p>17 17 BY MS. KLIEBENSTEIN:</p> <p>18 18 Q. All right Mr. Bakewell, just to close up this line</p> <p>19 19 of questioning so that I'm clear, if you turn to</p> <p>20 20 Page 47 in your report.</p> <p>21 21 A. Okay.</p> <p>22 22 Q. So the list of applications on Page 47 can you</p> <p>23 23 tell me which -- can you identify for me which of</p> <p>24 24 those applications you have been informed do</p> <p>25 25 contribute to revenue?</p>	<p style="text-align: right;">Page 45</p> <p>1 said that, hey, I've got an open mind, and I've</p> <p>2 tried to leave open the possibility that there</p> <p>3 might be some, and you and I discussed earlier,</p> <p>4 and this is also in my report, how the cost,</p> <p>5 income, and market approaches are interrelated,</p> <p>6 and the best measure of any sort of incremental</p> <p>7 footprint would be manifest or show up in the</p> <p>8 market-derived data points, and I discussed that</p> <p>9 too.</p> <p>10 Q. You mentioned incremental revenues and profit, and</p> <p>11 incremental footprint. What do you mean by those</p> <p>12 phrases?</p> <p>13 A. I thought that's what you're asking me.</p> <p>14 Q. Maybe. I'm not in your industry though so I just</p> <p>15 want to make sure I understand what you mean by</p> <p>16 the phrase, let's start with, incremental</p> <p>17 footprint.</p> <p>18 A. That's what we're supposed to measure is</p> <p>19 incremental.</p> <p>20 Q. The incremental change that Blaze Advisor does or</p> <p>21 doesn't add; is that what that phrase means?</p> <p>22 A. It has to be incremental to Blaze, or specific to</p> <p>23 the allegations in this case.</p> <p>24 Q. Did you, in your report, create a model for FICO's</p> <p>25 damages based on FICO's disgorgement claim?</p>

<p style="text-align: right;">Page 46</p> <p>1 A. What do you mean create a model?</p> <p>2 Q. Did you create a damages model responding to Mr.</p> <p>3 Zoltowski's model as to what would be the</p> <p>4 appropriate measure of damages for disgorgement?</p> <p>5 A. He doesn't really have a model. He just says</p> <p>6 everything. That's not really a model.</p> <p>7 Q. My question is: Do you have a model for what you</p> <p>8 view as the appropriate amount of damages for</p> <p>9 copyright disgorgement in this case?</p> <p>10 A. Well, my assumption is what I laid out. If that's</p> <p>11 what your -- if you mean by a model. I laid that</p> <p>12 out in Section 3.6.</p> <p>13 Q. And I don't mean the legal framework. I mean -- I</p> <p>14 mean a damages model with dollar figures in it.</p> <p>15 A. Is that a question?</p> <p>16 Q. Yes.</p> <p>17 A. I don't understand it.</p> <p>18 Q. Does your report provide an affirmative opinion as</p> <p>19 to what should be the damages amount for copyright</p> <p>20 disgorgement in this case?</p> <p>21 A. Yes.</p> <p>22 Q. What is that?</p> <p>23 A. Well, I think, there again, the specific most</p> <p>24 succinct answer is that it's probably a null</p> <p>25 value, that Mr. Zoltowski hasn't identified</p>	<p style="text-align: right;">Page 48</p> <p>1 A. I make assumptions about that. I don't offer</p> <p>2 opinions about liability. I would have assumed</p> <p>3 everything you claim infringes -- infringes, if</p> <p>4 that's the word that you used, and all the</p> <p>5 wrongdoings that you've claimed are in fact</p> <p>6 wrongdoings. I've made that assumption.</p> <p>7 Q. Your opinions though remove some of the</p> <p>8 applications that FICO has accused of infringement</p> <p>9 and breach of contract; is that right?</p> <p>10 A. What are you referring to?</p> <p>11 Q. Look on Page 45, and the header at the top is Mr.</p> <p>12 Zoltowski's Analysis is Overstated because He</p> <p>13 Includes Applications that Do Not Use Blaze</p> <p>14 Advisor. Do you understand that it's FICO's</p> <p>15 position that the applications with -- with Xs by</p> <p>16 them in the table below that do use Blaze Advisor?</p> <p>17 A. I think that that may or may not be your position.</p> <p>18 My experience is that as discovery proceeds in</p> <p>19 matters like this that plaintiffs often times will</p> <p>20 learn that their allegations are not entirely</p> <p>21 accurate, and they will adjust, and one of the</p> <p>22 ways that they can adjust is through their</p> <p>23 experts, like Mr. Zoltowski, can elect based upon</p> <p>24 the evidence and discovery that's occurred to be</p> <p>25 more specific and accurate and not include certain</p>
<p style="text-align: right;">Page 47</p> <p>1 anything that's specific to the allegations in</p> <p>2 this case, and I haven't seen how the allegations</p> <p>3 in this case specifically create value or relate</p> <p>4 to value other than sort of the market-derived</p> <p>5 data points, and then in response to Mr.</p> <p>6 Zoltowski's, with all due respect, vague and</p> <p>7 inflated figures, I provide context for the costs</p> <p>8 that would apply without accepting that what he's</p> <p>9 doing is correct.</p> <p>10 What he's done, frankly, is so wrong that</p> <p>11 it's challenging to respond his analysis in, like,</p> <p>12 a specific way, but I've tried to be as specific</p> <p>13 as I can, and one of the things that he's done</p> <p>14 without conceding -- without me conceding that</p> <p>15 he's identified a reliable set of revenues is he</p> <p>16 totally missed the boat on -- on cost. He didn't</p> <p>17 even try, which is a problem because it relates to</p> <p>18 and it shows his lack of either understanding of</p> <p>19 the business or willingness to endeavor in an</p> <p>20 analysis of understanding the business.</p> <p>21 Q. Does your report provide an opinion about which</p> <p>22 Federal applications are accused of infringing</p> <p>23 FICO's copyrights in breaching the agreement?</p> <p>24 A. An opinion of that?</p> <p>25 Q. Yeah.</p>	<p style="text-align: right;">Page 49</p> <p>1 things in his analysis, and I frankly think there</p> <p>2 was evidence there that he should have recognized</p> <p>3 and -- and credited.</p> <p>4 If he doesn't credit that, I'm fine making</p> <p>5 the assumptions that somehow you're going to prove</p> <p>6 that those applications use Blaze Advisor. I'm</p> <p>7 only making assumptions about liability, and I'm</p> <p>8 indicating that my analysis is flexible, and that</p> <p>9 whatever the record evidence shows that should be</p> <p>10 included.</p> <p>11 For whatever reason, Mr. Zoltowski isn't</p> <p>12 willing to each make those -- those sort of basic</p> <p>13 concessions, which I think is -- is problematic,</p> <p>14 but part of my job here is to -- is to highlight</p> <p>15 that issue, and to show what the impact would be,</p> <p>16 and how you account for it to be helpful to the</p> <p>17 fact finder.</p> <p>18 Q. I'll represent to you that FICO does believe all</p> <p>19 of these applications use Blaze Advisor. Looking</p> <p>20 at Exhibit 1, your report does not contain an</p> <p>21 alternative damages framework for those</p> <p>22 applications that you have listed as does not use</p> <p>23 Blaze Advisor; is that right?</p> <p>24 A. No. That's not true. I think your interpretation</p> <p>25 is a little too narrow of what I'm doing.</p>

<p style="text-align: right;">Page 50</p> <p>1 What I'm doing here is responding to what</p> <p>2 Mr. Zoltowski is saying, and he's -- he's assuming</p> <p>3 I suppose that you're going to prove up every</p> <p>4 single one of your claims, and I can make that</p> <p>5 same assumption too and incorporate the same</p> <p>6 numbers that he does, but there's -- there's</p> <p>7 evidence, as I understand it, and it wouldn't be</p> <p>8 the first time I've seen this, where discovery</p> <p>9 proceeded and it came to light that there are</p> <p>10 certain applications that don't use Blaze Advisor,</p> <p>11 or don't infringe, and in that case, they need to</p> <p>12 be deducted, and there's all kind of, like,</p> <p>13 combinations of -- of results. I'm indicating one</p> <p>14 here in Exhibit 1 for example.</p> <p>15 It could be that CUW is found by the fact</p> <p>16 finder not to be something that belongs on the</p> <p>17 list, and it's easy enough to -- to make that sort</p> <p>18 of adjustment. I'm indicating one set of</p> <p>19 adjustments that I understand applies.</p> <p>20 Q. And who provided you with the assumption that the</p> <p>21 applications with Xs by them on Page 45 do not use</p> <p>22 Blaze Advisor?</p> <p>23 A. Well, not just to me. It's from deposition</p> <p>24 testimony of Mr. Harkin and Mr. Pandey. It's from</p> <p>25 Fed's answers. Footnotes -- I've had this all</p>	<p style="text-align: right;">Page 52</p> <p>1 some reference to Blaze Advisor in doing that sort</p> <p>2 of general Internet research. Those would be the</p> <p>3 places that come to mind.</p> <p>4 Q. Did you -- did you see how Blaze Advisor works</p> <p>5 within Federal?</p> <p>6 A. Yes.</p> <p>7 Q. Tell me about that.</p> <p>8 A. I think there my understanding was developed more</p> <p>9 from looking at flow charts. I had already</p> <p>10 developed an understanding of how the product</p> <p>11 worked and what the interface looked like from the</p> <p>12 materials that I described to you a moment ago,</p> <p>13 and so then when I spoke with, for example, Mr.</p> <p>14 Pandey, he described thing to me, and then Fed</p> <p>15 produced those flow charts. That all kind of fit</p> <p>16 together and gave me an understanding for how the</p> <p>17 systems would work at Federal.</p> <p>18 Q. Have you reviewed the rules that are within Blaze</p> <p>19 Advisor at Federal?</p> <p>20 A. Some of them. I'm not a technical expert, but</p> <p>21 I've seen some information that gave me an</p> <p>22 understanding of that as a lay person.</p> <p>23 Q. And what materials are you referring to?</p> <p>24 A. Marketing materials, deposition testimony, and the</p> <p>25 like.</p>
<p style="text-align: right;">Page 51</p> <p>1 documented in Footnotes 224 through 229.</p> <p>2 Q. So you have done no independent analyses, separate</p> <p>3 from reviewing the materials in this lawsuit and</p> <p>4 speaking with people at Federal, to confirm which</p> <p>5 applications do or do not use Blaze Advisor?</p> <p>6 A. That question doesn't even make sense. You said I</p> <p>7 didn't do any independent research except for the</p> <p>8 independent research that I did? That doesn't</p> <p>9 make sense.</p> <p>10 Q. Mr. Bakewell, you have not gone into the</p> <p>11 applications themselves to confirm whether Blaze</p> <p>12 Advisor is or isn't used in them; correct?</p> <p>13 A. Correct. I'm not a technical expert.</p> <p>14 Q. Have you ever seen a demonstration of Blaze</p> <p>15 Advisor?</p> <p>16 A. Yes.</p> <p>17 Q. Tell me about that.</p> <p>18 A. I've looked at -- there's descriptions in</p> <p>19 marketing materials. There's a couple of</p> <p>20 marketing materials that are very detailed that I</p> <p>21 think provide a demonstration of Blaze Advisor.</p> <p>22 I think at different points I went -- sort</p> <p>23 of did some of my own Internet research and, like,</p> <p>24 looking at YouTube videos and stuff. I can't</p> <p>25 remember specifically what I saw, but I did see</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. But not the rules themselves that are in Blaze</p> <p>2 Advisor today?</p> <p>3 A. I may have. I can't remember if I've seen that</p> <p>4 type of stuff specifically from -- from Federal,</p> <p>5 or if that's the understanding that I gained is</p> <p>6 from combining general rules descriptions that</p> <p>7 I've seen with testimony and other documents and</p> <p>8 diagrams. I don't have -- I'd have to have my</p> <p>9 memory refreshed.</p> <p>10 Q. Moving to Paragraph 44.</p> <p>11 A. Okay.</p> <p>12 Q. The last sentence says, "Annual sales activity is</p> <p>13 principally driven by customer renewals of</p> <p>14 existing policies."</p> <p>15 A. Correct. That's one of the things I was referring</p> <p>16 to earlier.</p> <p>17 Q. Do you know what percent of Federal's revenues in</p> <p>18 any given year are from customer renewals of</p> <p>19 existing policies?</p> <p>20 A. I've seen that, but I don't have a number</p> <p>21 memorized.</p> <p>22 Q. And is this sentence true -- you know, I see that</p> <p>23 it's from a general industry publication. Is that</p> <p>24 true at Federal?</p> <p>25 A. Definitely.</p>

<p style="text-align: right;">Page 54</p> <p>1 Q. And how do you know that?</p> <p>2 A. Because the businesses that comprise Federal are</p> <p>3 some of the oldest and most established businesses</p> <p>4 in the country. In addition to seeing more</p> <p>5 specific information and testimony.</p> <p>6 Q. Is it your opinion in your report that Federal's</p> <p>7 existing customer relationships drive revenue?</p> <p>8 A. Yes.</p> <p>9 Q. And do you know what percent of Federal's revenue</p> <p>10 existing customer relationships drive?</p> <p>11 A. I don't think I can give you a specific number,</p> <p>12 but it's very high.</p> <p>13 Q. And what's your -- what's your support for that?</p> <p>14 A. Same things we just discussed.</p> <p>15 Q. Which are -- just so I've got it right, why don't</p> <p>16 you recap those, that support for me.</p> <p>17 A. Sure. Just broadly, we talked about how this</p> <p>18 industry works, property and casualty insurance,</p> <p>19 and the cites that you asked me about in</p> <p>20 Paragraphs 44 and I think 43. We talked about the</p> <p>21 Federal businesses and their long history. This</p> <p>22 is also explained in annual reports of Chubb, and</p> <p>23 then I referred to deposition testimony and other</p> <p>24 documents that describe how Chubb's business works</p> <p>25 fundamentally, and ACE, and Federal.</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. And what is your support for that statement?</p> <p>2 A. Which statement? No or yes?</p> <p>3 Q. Your -- the support for your statement that</p> <p>4 know-how of the workforce at Federal attributes --</p> <p>5 attributes or contributes to revenue?</p> <p>6 A. It comes from gaining an understanding of the</p> <p>7 business and the industry that it operates in. It</p> <p>8 comes from financial statements and annual</p> <p>9 reports. It comes from documents prepared in the</p> <p>10 ordinary course of business as well as deposition</p> <p>11 testimony. Those would be some examples and not</p> <p>12 an exhaustive list.</p> <p>13 Q. I'm going to try to ask this generally. Maybe we</p> <p>14 can, maybe we can't.</p> <p>15 A. Let's try.</p> <p>16 Q. I have a few -- I have about ten other things on</p> <p>17 my list that I want to ask you the same questions</p> <p>18 about the percentage -- the percentage of revenue</p> <p>19 that is attributable to these different factors</p> <p>20 and then your support for that. So I'll -- I'll</p> <p>21 list them, and if we have to go through them one</p> <p>22 at a time, let me know; brand recognition, ability</p> <p>23 to maintain strong financial ratings, underwriting</p> <p>24 expertise, business infrastructure, global</p> <p>25 presence, price, product offerings, scope and type</p>
<p style="text-align: right;">Page 55</p> <p>1 Q. But you haven't seen a marketing survey or</p> <p>2 anything like that that says existing customer</p> <p>3 relationships drive 33 percent of revenues?</p> <p>4 Nothing that specific; is that correct?</p> <p>5 A. There's nothing that is -- has a number like 33</p> <p>6 percent in response to a question like you just</p> <p>7 provided that I've seen. The information that</p> <p>8 I've seen is more fundamental than that, and</p> <p>9 pervasive.</p> <p>10 Q. I also saw you mention strong management team</p> <p>11 throughout your report. Do you believe that</p> <p>12 Federal's revenues are generated by a strong</p> <p>13 management team as well?</p> <p>14 A. I do.</p> <p>15 Q. And can you identify a percent for me?</p> <p>16 A. I can't give you a percentage for that.</p> <p>17 Q. And is your support for that opinion the same</p> <p>18 types of information we just discussed?</p> <p>19 A. Yes.</p> <p>20 Q. The next is know-how of Federal's workforce. Is</p> <p>21 it your opinion that the know-how of Federal's</p> <p>22 workforce contributes to revenues at Federal?</p> <p>23 A. Absolutely.</p> <p>24 Q. And do you know a percent?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 57</p> <p>1 of distribution system, customer service quality,</p> <p>2 and use of technology.</p> <p>3 So for that -- that bucket of factors, can</p> <p>4 you tell me what percent of Federal's revenues are</p> <p>5 attributable to those different elements?</p> <p>6 A. I don't think I have a specific percentage for</p> <p>7 each of those.</p> <p>8 Q. Do you have a specific percentage for any of them?</p> <p>9 A. Not committed to memory. There might be a</p> <p>10 document somewhere that measures something like</p> <p>11 that, but I can't give you anything off the top of</p> <p>12 my head.</p> <p>13 Q. Do you believe those things, those aspects of</p> <p>14 Federal's business attribute to the revenue?</p> <p>15 A. I don't understand your question. What do you</p> <p>16 mean attribute to?</p> <p>17 Q. Is Federal's revenue -- couldn't identify a</p> <p>18 percentage, but is Federal's revenue in general</p> <p>19 attributed to all of those factors I just listed?</p> <p>20 A. I don't know what you mean by attributed to there.</p> <p>21 That sounds like an easy enough word, but that can</p> <p>22 be, like, a term of art in my field. So it's --</p> <p>23 it would be easier if you use a different word for</p> <p>24 me.</p> <p>25 Q. Why don't we try just one and see if we can work</p>

<p style="text-align: right;">Page 58</p> <p>1 through it. So brand recognition.</p> <p>2 A. Yes.</p> <p>3 Q. Do you believe that any of Federal's revenue is</p> <p>4 attributed to brand recognition?</p> <p>5 A. Attributable to? Toward it? What do you mean?</p> <p>6 Why did you say attributed to in the past tense?</p> <p>7 That's a weird -- that's weird to me.</p> <p>8 Q. I can use attributable.</p> <p>9 A. Okay.</p> <p>10 Q. Brand recognition. Are any of Federal's revenues</p> <p>11 attributable to brand recognition?</p> <p>12 A. Yes.</p> <p>13 Q. And do you know a specific percent?</p> <p>14 A. I can't tell you a specific number.</p> <p>15 Q. And what is your support for your opinion that</p> <p>16 Federal -- Federal's revenues are attributable to</p> <p>17 brand recognition?</p> <p>18 A. Well, there's two things fundamentally. First</p> <p>19 that Chubb and ACE are two very highly regarded</p> <p>20 brands, and my experience is that in a field like</p> <p>21 this that you can -- it's possible to identify a</p> <p>22 specific value that's attributable to a brand, or</p> <p>23 to brands like those, and second, Chubb just went</p> <p>24 through a re-branding effort, and I just read</p> <p>25 about it recently where Chubb's management talked</p>	<p style="text-align: right;">Page 60</p> <p>1 I've seen.</p> <p>2 Q. The next is underwriting expertise. Are Federal's</p> <p>3 revenues attributable to underwriting expertise?</p> <p>4 A. Yes.</p> <p>5 Q. Do you have a percent?</p> <p>6 A. No.</p> <p>7 Q. And what is your support for that opinion?</p> <p>8 A. It's from understanding how the business works</p> <p>9 fundamentally is -- and the different sources that</p> <p>10 I gave you for each of the other categories would</p> <p>11 probably apply to this category as well.</p> <p>12 Q. If you were tasked with trying to figure out a</p> <p>13 percentage of the revenues that were attributable</p> <p>14 to underwriting expertise, how would you go about</p> <p>15 doing that?</p> <p>16 A. At the highest level, I would use the tools that I</p> <p>17 have in my -- my toolbox as a valuation expert,</p> <p>18 and those -- in the toolbox, there's three big</p> <p>19 bins that I put the tools into.</p> <p>20 One would be what I'll call income</p> <p>21 approach, that bin. The other one would be the</p> <p>22 cost approach, and the -- the third would be the</p> <p>23 market approach, and I would think about what</p> <p>24 tools are available under each of those bins.</p> <p>25 Under the income approach, I would -- I'm</p>
<p style="text-align: right;">Page 59</p> <p>1 about the value expects to create from that brand</p> <p>2 and the refinement on the Chubb side, and the</p> <p>3 integration of the ACE business, and the reasons</p> <p>4 why it -- it did that relate to revenues, and</p> <p>5 that's described at length in documents that I've</p> <p>6 seen.</p> <p>7 Q. So the next subject is the ability to maintain</p> <p>8 strong financial ratings. Is it your opinion that</p> <p>9 Federal's revenues are attributable to the ability</p> <p>10 to maintain strong financial ratings?</p> <p>11 A. Yes.</p> <p>12 Q. Do you have a percentage?</p> <p>13 A. No. I can't give you a percentage. Not right --</p> <p>14 sitting right here. If I was tasked with doing</p> <p>15 that, I might be able to.</p> <p>16 Q. And what is your support for that opinion, that</p> <p>17 Federal's revenues are attributable to the ability</p> <p>18 to maintain strong financial ratings?</p> <p>19 A. Well, it's how the business works, and I think</p> <p>20 that there's some examples from my experience</p> <p>21 where if you're an insured you can be required to</p> <p>22 obtain insurance from a company that has a certain</p> <p>23 rating. That wouldn't be unusual for me to see in</p> <p>24 a contract, and that's consistent with how Federal</p> <p>25 describes its business in a variety of places that</p>	<p style="text-align: right;">Page 61</p> <p>1 inclined to say that's probably going to be the</p> <p>2 best fit here, and surveys would be -- would be</p> <p>3 one way to do it. I think I could do some</p> <p>4 comparisons using statistics between companies</p> <p>5 that have different ratings and see if there's a</p> <p>6 correlation between ratings changes and revenues.</p> <p>7 That's just off the top of my head how I</p> <p>8 would go about doing -- solving that problem.</p> <p>9 Q. Business infrastructure. Is it your opinion that</p> <p>10 Federal's business structure -- strike that. Let</p> <p>11 me ask it again. Are Federal's revenues</p> <p>12 attributable to its business structure?</p> <p>13 A. You said business infrastructure, and then you</p> <p>14 said business structure. Which one do you mean?</p> <p>15 Q. I mean infrastructure. I get so flummoxed trying</p> <p>16 to say attributable that I can't say it. Go</p> <p>17 ahead.</p> <p>18 A. I don't understand your question. I don't think</p> <p>19 that was a question.</p> <p>20 Q. Are Federal's revenues attributable to business</p> <p>21 infrastructure?</p> <p>22 A. Maybe.</p> <p>23 Q. Are Federal's revenues attributable to its global</p> <p>24 presence?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 62</p> <p>1 Q. And can you identify the percent of Federal's 2 revenues that are attributable to its global 3 presence? 4 A. I can't give you a specific number as I sit here 5 right now. 6 Q. If you were asked to try to come up with a 7 specific number, how would you go about doing 8 that? 9 A. I'd get my toolbox out that I just described for 10 you, has three big compartments in it, and then 11 think about what specific tools within each 12 compartment or which compartment I would try to 13 use and. 14 Q. And what is your support for your opinion that 15 Federal's revenues are attributable to its global 16 presence? 17 A. Because there are businesses that operate globally 18 and they require global insurance companies, 19 global coverage, and I think that if somehow 20 Federal artificially -- this is very artificial by 21 the way in the case of Federal and its companies, 22 was only able to operate in one geography, then 23 there would be -- I'd have to do some thinking 24 about what the impact is of that, and my 25 experience is that having worked for a global</p>	<p style="text-align: right;">Page 64</p> <p>1 elasticity and demand is, like, one of the 2 fundamental considerations as a -- as a 3 financial/economic expert that I -- I'm interested 4 in understanding anytime I assess a business and 5 measuring when it's appropriate. 6 Q. Thinking about the insurance industry 7 specifically, is there anything -- anything else 8 that -- beyond the fact that you need products to 9 sell to make money? Is there any other support 10 for your opinion that Federal's product offerings 11 the revenues are attributable to Federal's product 12 offerings? 13 A. Sure. 14 Q. And what's that? 15 A. Well, another thing that comes to mind is I can 16 draw on my own experience when I was in industry 17 one of the things I was responsible for was 18 managing and procuring property casualty -- 19 property and casualty insurance, and I -- I can 20 remember that figuring out the different vendors 21 and their relationships with brokers and how 22 things were underwritten was an important part of 23 that decision-making process, and I actually -- I 24 can remember taking -- I actually took a week once 25 to take a deep dive and learn all about that</p>
<p style="text-align: right;">Page 63</p> <p>1 company and observed the globalization trends, 2 particularly as they affect the United States, 3 that's a consideration in the real world. 4 Q. And price and product offerings; do you have an 5 opinion as to whether Federal's revenues are 6 attributable to prices and product offerings? 7 A. Yes. 8 Q. And can you identify a percentage of Federal's 9 revenues that are attributable to price and 10 product offerings? 11 A. Not that broadly as I sit here right now. 12 Q. If you were tasked with figuring out a percentage, 13 how would you go about doing that? 14 A. I would get out the toolbox and think about the 15 tools in each compartment that I would use. 16 Q. And what is your support for your opinion that 17 Federal's revenues are attributable to its product 18 offerings and their prices? 19 A. Well, let's address each one. The first one, 20 product offerings, your -- it's such a circular -- 21 what's the word? It's self-referencing or 22 tautology. If you -- you need product offerings 23 to generate revenues. So that's the first one, 24 and then the second one, pricing, that's an issue 25 that I'm always interested in studying. Price</p>	<p style="text-align: right;">Page 65</p> <p>1 stuff. I went to the Lloyd's Market in London, 2 and toured that, and interviewed people, and tried 3 to learn as much as I could because it was an 4 important part of our business. So I have a very 5 good understanding I think of how that -- how that 6 works. 7 The product offerings and mix, and having a 8 different sources for different products can be 9 important. Sometimes it would make sense to have 10 multiple services and products purchased from one 11 underwriter and broker, and sometimes it would 12 make sense to -- to split that stuff up. That's 13 important. 14 Q. So you mentioned a trip to Lloyd's in London; is 15 that right? 16 A. Sure. Yeah. I did. I mentioned that. 17 Q. For what purpose? 18 A. I was trying to give some color to my answer and 19 what I was remembering about how I learned that 20 products -- different products are important. 21 Q. And -- and what was the purpose of this trip? 22 A. To learn how -- I mean, that's a market that's 23 been around for literally centuries, and to learn 24 how the industry has developed over the years. 25 Q. And was there a particular -- was there a</p>

<p style="text-align: right;">Page 66</p> <p>1 particular research question you had when you --</p> <p>2 when you scheduled that trip, or were you trying</p> <p>3 to solve a business problem?</p> <p>4 A. Well, both. I knew that it was a responsibility</p> <p>5 that I had. I was tasked with addressing some</p> <p>6 problems that we had, and I wanted to learn as</p> <p>7 much as I could about the insurance industry and</p> <p>8 how it worked.</p> <p>9 We owned some assets that we had insured,</p> <p>10 and we had some projects that were insured and</p> <p>11 that we had to get insured, and it was my job and</p> <p>12 so I wanted to learn as much as I could about it,</p> <p>13 and that was a great opportunity that was</p> <p>14 presented to me.</p> <p>15 Q. And this is while you were working at?</p> <p>16 A. Wartsila, W-A-R-T-S-I-L-A.</p> <p>17 Q. Okay, and you mentioned you were tasked with</p> <p>18 addressing some problems that we had. What were</p> <p>19 those problems specifically?</p> <p>20 A. We spent a lot of money on insurance for projects</p> <p>21 that were underway as well as -- this was when I</p> <p>22 worked for -- I was the -- my job title was</p> <p>23 managing director of I think finance or treasury</p> <p>24 control and administration for what was our --</p> <p>25 basically our investment fund, and we were</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. And what is it?</p> <p>2 A. Can be a good thing.</p> <p>3 Q. In what circumstances can having a broad product</p> <p>4 offering be a good thing, and in what</p> <p>5 circumstances can it be a bad thing?</p> <p>6 A. Well, it makes sense for your customers it's a</p> <p>7 good thing, and if you are just compiling a bunch</p> <p>8 of businesses together that there aren't</p> <p>9 interrelationships with and that you can't make</p> <p>10 work together better than they would be</p> <p>11 independently, then it's probably not so good.</p> <p>12 Q. That's pretty true across all industries; wouldn't</p> <p>13 you agree?</p> <p>14 A. I think so.</p> <p>15 Q. Okay. Scope and type of distribution system.</p> <p>16 That's our next factor that's listed in your</p> <p>17 report. Is it your opinion that Federal's</p> <p>18 revenues are attributable to the scope and type of</p> <p>19 distribution system that Federal has?</p> <p>20 A. Probably. I would need to know more. I would say</p> <p>21 maybe.</p> <p>22 Q. And customer service default; do you have an</p> <p>23 opinion as to whether Federal's revenues are</p> <p>24 attributable to customer service quality?</p> <p>25 A. I think it seems plausible to me, but I would have</p>
<p style="text-align: right;">Page 67</p> <p>1 spending a lot of money on insurance, and the</p> <p>2 program -- we didn't really have a well</p> <p>3 thought-out strategy. We had just accumulated a</p> <p>4 bunch of assets, and there was an opportunity to</p> <p>5 improve what we were doing, and it was my job.</p> <p>6 Q. Did you come away from that week at Lloyd's of</p> <p>7 London with any conclusions?</p> <p>8 A. Probably.</p> <p>9 Q. Do you remember what they were?</p> <p>10 A. Not really. It was more, you know, sometimes when</p> <p>11 you learn, you learn specific facts and you</p> <p>12 memorize some things just like in school, and</p> <p>13 those things tend to disappear, right, but the</p> <p>14 things, the principles that you learn as opposed</p> <p>15 to things memorialization the principles tend to</p> <p>16 stick with you, and those principles stuck with</p> <p>17 me.</p> <p>18 Q. Am I hearing you right that one of the principles</p> <p>19 you took away from that was having a broad product</p> <p>20 offering was a good thing for an insurance</p> <p>21 company?</p> <p>22 A. No.</p> <p>23 Q. Do you have an opinion on that one way or the</p> <p>24 other?</p> <p>25 A. I do.</p>	<p style="text-align: right;">Page 69</p> <p>1 to say maybe there too. Because I would need to</p> <p>2 define that a little more specifically.</p> <p>3 Q. And use of technology; do you have an opinion</p> <p>4 whether Federal's revenues are attributable to</p> <p>5 Federal's use of technology?</p> <p>6 A. Like all of its technology, generally, maybe. I'd</p> <p>7 have to know more specifics. I mean, certainly</p> <p>8 the proposition, as I said earlier, is -- is</p> <p>9 plausible. That's one of the things -- one of the</p> <p>10 things that collectively would relate to revenues,</p> <p>11 but if we're going to get more granular, then I</p> <p>12 need to know more about the specific aspects that</p> <p>13 you're talking about.</p> <p>14 Q. In your report, Paragraph 35, you have some</p> <p>15 sentences that are cited to Mr. McCarter. One of</p> <p>16 them is that Blaze Advisor is an agnostic business</p> <p>17 solution, and another is that Blaze Advisor is</p> <p>18 similar to a blank Excel worksheet.</p> <p>19 Is your support for those opinions -- your</p> <p>20 support for your opinions is your conversation</p> <p>21 with Mr. McCarter; correct?</p> <p>22 A. Sort of. I mean, that's what I listed in</p> <p>23 Paragraph 35, but there's other things that</p> <p>24 support that -- those statements as well.</p> <p>25 For example, Federal's marketing</p>

<p style="text-align: right;">Page 70</p> <p>1 literature, its data sheets -- not Federal's. I'm 2 sorry. I meant FICO's and the data sheets that 3 are specific to Blaze Advisor that I've seen. 4 I've seen other information as well, but that 5 would be an example. 6 I don't -- when I write a footnote, my 7 intent is not to provide like an exhaustive list 8 of everything that I've seen that might support or 9 relate to a statement in my report. 10 Q. I see in Paragraphs 36 and 37 that you also spoke 11 to Mr. McCarter about the different applications 12 and technologies that Federal -- Federal employs; 13 is that correct? 14 A. I must have missed a word in your question. It 15 probably was a fine question, but I missed 16 something. 17 Q. Let's just go to 36. 18 A. Okay. 19 Q. You learned from Mr. McCarter that Federal 20 utilizes approximately 1500 different 21 applications; correct? 22 A. Yes. 23 Q. And do you have an opinion as to what percent of 24 Federal's revenues are attributable to those 1500 25 applications collectively?</p>	<p style="text-align: right;">Page 72</p> <p>1 is just one of approximately 20 different 2 technologies in CSI Express? 3 A. Correct. 4 Q. And one of 15 to 20 different technologies in CUW; 5 correct? 6 A. Correct. 7 Q. Do you know what the other technologies in CSI 8 Express and CUW do, what their functions are? 9 A. Yes. 10 Q. What are they? 11 A. Well, if I wanted to give you something more 12 specific, I know that there's flow charts that 13 I've seen that have more granular details, but 14 generally speaking, they relate to the flow of 15 information, and business process, and some 16 different analytics that are done. 17 Q. Did you conduct a study as to what these other 18 technologies -- let me ask it a different way. 19 Did you conduct a study for these other 20 technologies whether Federal's revenues are 21 attributable in any way to these other 22 technologies? 23 A. I asked about generally. I don't think that I did 24 a study of each of those and tried to measure the 25 revenues that are specifically attributable to</p>
<p style="text-align: right;">Page 71</p> <p>1 A. No. 2 Q. What about any individual application; do you have 3 any estimation as to what percentage -- well, let 4 me ask it a different way. 5 Do you have an opinion as to whether 6 Federal's revenues are attributable to these 1500 7 applications? 8 A. All 1500? I'd have to study that further. 9 Q. Do you know individually what any of these 10 applications do besides the ones that contain 11 Blaze Advisor that are at issue in this case? 12 A. Yes. 13 Q. What do they do? 14 A. Well, there's accounting software, and there's 15 other types of applications that are typical to 16 underwriting businesses, recordkeeping type of 17 information. 18 Q. And did -- did Mr. McCarter tell you that, or are 19 you just relying on your own business experience? 20 A. I think he gave me maybe a little more color. 21 This is not a transcript of my interview with him, 22 and I think that he provided some further context 23 of what he was saying in the -- when he listed the 24 1500 applications. 25 Q. In Paragraph 37, you reference that Blaze Advisor</p>	<p style="text-align: right;">Page 73</p> <p>1 each element, but certainly an understanding, 2 you're trying to gain an understanding of how the 3 business worked and what those process flow 4 diagrams related to. That's something that I 5 asked Mr. Pandey and Mr. McCarter about. 6 Q. Is it your opinion in your report that FICO is 7 only entitled to profits from the actual named 8 defendants themselves? 9 MR. FLEMING: Objection. Calls for legal 10 conclusion. 11 THE WITNESS: I'm trying to think of a way 12 to answer it. 13 MS. KLIEBENSTEIN: Let me ask this question 14 again. 15 THE WITNESS: Okay. 16 MS. KLIEBENSTEIN: If I could. 17 THE WITNESS: Sure. 18 BY MS. KLIEBENSTEIN: 19 Q. Is it your opinion in your report that FICO may 20 only attempt to disgorge the profits from the 21 actual named defendants themselves? 22 MR. FLEMING: Same objection. Calls for 23 legal conclusion. 24 THE WITNESS: So I'm trying to think of a 25 way to answer it. That's not the same as the</p>

<p style="text-align: right;">Page 74</p> <p>1 objection that's being made, but frankly, I have</p> <p>2 really viewed that all along as being a legal</p> <p>3 issue. I was surprised that Mr. Zoltowski was so</p> <p>4 willing to offer opinions about that issue. They</p> <p>5 don't seem appropriate to me.</p> <p>6 BY MS. KLIEBENSTEIN:</p> <p>7 Q. Your report states that you don't believe Mr.</p> <p>8 Zoltowski has proven all the entities in his</p> <p>9 report were, quote-unquote, one; is that right?</p> <p>10 A. Where? Where are you?</p> <p>11 Q. I'm at 168. So the very last sentence on the Page</p> <p>12 51 starts with, "These are ordinary business</p> <p>13 relationships, and Mr. Zoltowski has provided no</p> <p>14 financial basis for effectively transforming these</p> <p>15 separate entities into one for the purposes of a</p> <p>16 damages assessment."</p> <p>17 A. Correct. I said that.</p> <p>18 Q. Do you have an opinion on what -- what would need</p> <p>19 to be shown in your mind to prove a financial</p> <p>20 basis for transforming these separate entities</p> <p>21 into one?</p> <p>22 A. Well, I think these -- let's look at these three</p> <p>23 sentences, and I'll give you a little more insight</p> <p>24 into why I chose the words that I did.</p> <p>25 So the sentence that starts, "These are</p>	<p style="text-align: right;">Page 76</p> <p>1 hasn't done his job, and then third, I say here</p> <p>2 again, from a financial perspective, I'm making it</p> <p>3 clear that this is just from a financial</p> <p>4 perspective, and I'm not offering a legal opinion,</p> <p>5 but certainly from a financial perspective, he has</p> <p>6 no basis to -- to sweep all this other stuff in</p> <p>7 because it's not tied to the evidence.</p> <p>8 I think there's a word that's missing here,</p> <p>9 Mr. Zoltowski's claims are not tied to the</p> <p>10 evidence and would result in a windfall to FICO.</p> <p>11 So that's sort of giving you some context</p> <p>12 for this and maybe some further understanding as</p> <p>13 to how I'm using certain terms in my report.</p> <p>14 Q. So no -- and it's that financial basis that I</p> <p>15 don't understand. So I heard you say there's no</p> <p>16 basis financially for combining this stuff</p> <p>17 together.</p> <p>18 What would provide a basis financially to</p> <p>19 -- to quote your words, combine this stuff</p> <p>20 together? Do that make sense?</p> <p>21 MR. FLEMING: Object to the extent it calls</p> <p>22 for a legal conclusion.</p> <p>23 THE WITNESS: No it doesn't make sense.</p> <p>24 Can you ask that again?</p> <p>25 MS. KLIEBENSTEIN: Sure.</p>
<p style="text-align: right;">Page 75</p> <p>1 ordinary business relationships, and Mr. Zoltowski</p> <p>2 has provided no financial basis," and it goes on,</p> <p>3 no financial basis is I'm saying, look, this is a</p> <p>4 legal issues, but to the extent Mr. Zoltowski is</p> <p>5 allowed to talk about this type of stuff</p> <p>6 financially, there's no basis for him combining</p> <p>7 this stuff together; right? That's what I'm</p> <p>8 trying to make clear there.</p> <p>9 The next sentence starts with, "It is my</p> <p>10 understanding that," well, that's -- I've done</p> <p>11 this throughout my report, and it's pretty</p> <p>12 standard for a financial expert, a damages expert</p> <p>13 to write this language, to use this language in</p> <p>14 two instances. One, where they are making</p> <p>15 assumptions about technology, and two, where they</p> <p>16 are making assumptions about the law. That's a</p> <p>17 statement that signals I think very clearly that,</p> <p>18 hey, it's a legal issue, I can just tell you what</p> <p>19 my understanding is, but I'm not a lawyer, I'm not</p> <p>20 offering any legal opinions.</p> <p>21 So -- and then I go on. I say, "He has no</p> <p>22 financial basis," and the context of this as it's</p> <p>23 gone on for -- this is, like, Page 52, 168</p> <p>24 paragraph, it's, like, look, if he's allowed to</p> <p>25 testify about this stuff, then financially he</p>	<p style="text-align: right;">Page 77</p> <p>1 BY MS. KLIEBENSTEIN:</p> <p>2 Q. Not asking for a legal conclusion, not asking you</p> <p>3 to opine on the law. I'm focusing on your use of</p> <p>4 the phrase financial basis, that you don't --</p> <p>5 correct me if I'm wrong, you don't see a financial</p> <p>6 basis in Mr. Zoltowski's report to combine the</p> <p>7 revenues from these different entities; is that --</p> <p>8 am I getting that right?</p> <p>9 MR. FLEMING: Same objection.</p> <p>10 THE WITNESS: Well, setting aside the fact</p> <p>11 that this is a legal issue, he hasn't, like,</p> <p>12 financially or economically shown that all this</p> <p>13 stuff is combined. That's basically one and the</p> <p>14 same. He hasn't shown that at all. I mean, he</p> <p>15 hasn't even come close. Totally, totally missed</p> <p>16 the mark frankly, and with all due respect.</p> <p>17 BY MS. KLIEBENSTEIN:</p> <p>18 Q. And I'm asking how would you go about it if you</p> <p>19 were asked to assess whether financially or</p> <p>20 economically these entities -- their revenues can</p> <p>21 be combined. How would you go about that</p> <p>22 assessment?</p> <p>23 A. I'll tell you what I would do, because this comes</p> <p>24 up from time to time, is I would be really careful</p> <p>25 to understand where the law and where finance and</p>

<p style="text-align: right;">Page 78</p> <p>1 economics is aligned and where it's not aligned, 2 and I would look at this from an economic point of 3 view, meaning looking at accounting rules is, 4 like, not going to do it. I know that from 5 experience. It's incomplete and myopic. It's 6 only one discipline within business, and I know 7 also from experience that the way the law 8 generally treats this is with some pretty straight 9 guidelines, and you can get some guidance from 10 doing some research into -- into alter ego and 11 principles that come from that, and then I would 12 want to ask the lawyers a whole bunch of questions 13 about what standards might apply in this 14 jurisdiction, in this court, why it's even 15 relevant.</p> <p>16 It's not -- it's not an issue I think to be 17 taken lightly like Mr. Zoltowski has, and it's 18 certainly not one where you're going to get a 19 complete answer if you only view the problem 20 through the lens of accounting.</p> <p>21 Q. So you would -- you would take a -- an approach 22 that's more economically focused at the very 23 least?</p> <p>24 A. You know, I don't know. Definitely what I would 25 do -- I'm telling you some of the concerns that I</p>	<p style="text-align: right;">Page 80</p> <p>1 helpful to people who are reading financial 2 statements and know the -- the rules that apply so 3 they can do some financial analysis, but it's not 4 helpful to really understanding the business in 5 and of itself. So you need more. I mean, you got 6 to -- you can't just use that narrow lens and 7 think that you're providing a holistic business 8 opinion, and that's setting aside -- again, in my 9 answers, and I've tried to do this throughout my 10 report, that's setting aside this concern that I 11 have about the law and my deference frankly to the 12 court and this judge. If this judge wants to 13 solve this problem on his own, that wouldn't be 14 unusual to me, and I would totally defer.</p> <p>15 Q. You mentioned all the disciplines within the 16 business field, and you listed accounting as one. 17 What are the other disciplines within the business 18 field?</p> <p>19 A. I think that in terms of alter ego analyses -- by 20 the way, they -- my experience is it will draw 21 upon all of these, and it includes business in 22 general, like management, how the business is 23 managed, human resources, and organizational 24 behavior, finance, accounting, and economics, and 25 information systems.</p>
<p style="text-align: right;">Page 79</p> <p>1 have and how I would go at solving the problem. 2 Because ultimately this is a legal question, and 3 it's a question that, you know, a lot of courts 4 say it's only their province to solve it. A lot 5 of judges are, like, you know what, I'll -- I'll 6 just deal with that issue, I don't need expert 7 opinion, and I think that, frankly, Mr. Zoltowski 8 should have thought about that too, and I can only 9 tell you, since you're asking me under oath, how I 10 would go about thinking about this problem. 11 That's what you just asked me; right?</p> <p>12 Q. So when you mentioned you would look at it 13 economically, I'm not an economist, what does that 14 -- what does that phrase mean? What does it 15 entail; looking at something economically?</p> <p>16 A. I think you need to look at it holistically and 17 combining all the -- the disciplines within -- 18 within the business field, not just accounting. 19 That's what I mean by economically.</p> <p>20 You can't just look at it through the lens 21 of -- that an accountant would because that's 22 going to give you an incomplete view of the 23 problem; right?</p> <p>24 It's very rules-based approach toward 25 financial reporting generally, and that can be</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. Infection systems being? Give me an example. 2 A. Well, how the business is set up to process things 3 on an automated basis. How payroll is done for 4 example is something that can be automated.</p> <p>5 Q. So not just -- so it's broader than -- when you 6 say information systems, to me my mind goes to the 7 applications at issue here. You're talking about 8 broader information --</p> <p>9 A. There's only one type of computer application -- 10 there's all kind of computer applications that are 11 used in business, like, when I go with my -- with 12 my son who is visiting colleges now, there's 13 departments in the college of business that are, 14 like, have followed the names that I just gave 15 you. There's organizational behavior department, 16 there's a information systems department, there's 17 a finance department, an economics department, 18 accounting department.</p> <p>19 Q. Okay.</p> <p>20 MR. FLEMING: We've been going for an hour. 21 Do you mind if we take a short break?</p> <p>22 THE WITNESS: I could use a break.</p> <p>23 MS. KLIEBENSTEIN: Yeah.</p> <p>24 THE WITNESS: I've been drinking a lot of 25 coffee here.</p>

<p style="text-align: right;">Page 82</p> <p>1 MS. KLIEBENSTEIN: Can we do just a short 2 one, and then we'll -- we'll go for about another 3 45 minutes and break for lunch. 4 MR. FLEMING: Sure. 5 MS. KLIEBENSTEIN: Does that work? 6 THE VIDEOGRAPHER: We're going off the 7 record. The time is 11:38 a.m. 8 (Whereupon a short break was taken from 9 a.m. to 11:48 a.m.) 10 THE VIDEOGRAPHER: We are back on the 11 record. This marks the beginning of Media 3 in 12 the deposition of Chris Bakewell. The time now is 13 11:49 a.m. 14 MR. FLEMING: Say Heather, at the beginning 15 of the deposition, I don't know if you mentioned 16 that Jim Woodward, in-house counsel, is present, 17 but he is, and I'm just making a note of that for 18 the record. 19 MS. KLIEBENSTEIN: Thank you. 20 MR. FLEMING: Yup. 21 BY MS. KLIEBENSTEIN: 22 Q. Can we go to the chart on Paragraph 180. 23 A. Okay. 24 Q. I'm trying to figure out where the -- where the 25 numbers from this table come from. Can you -- can</p>	<p style="text-align: right;">Page 84</p> <p>1 to deduct the costs it incurs to generate 2 revenue." Was it your assumption that Federal was 3 entitled to deduct all of its costs it incurs to 4 generate revenue, or just a portion? 5 A. I think that the appropriate deductions are of 6 costs that are required to generate whatever 7 revenues are identified. 8 Q. And so when you use the phrase generate revenue in 9 Paragraph 193, you mean generate the revenues that 10 -- generate which revenues; all of the Federal 11 revenues, or just the ones that have been put 12 forth in Mr. Zoltowski's report? 13 A. I don't really mean either of those things. 14 Q. What do you mean? 15 A. I mean that those are costs that have a 16 relationship with an economic tie or a financial 17 tie to whatever it is the revenue stream that is 18 being analyzed, and there's issues with the 19 revenue stream that I talk about prior to this at 20 some length, and there needs to be a connection 21 between the costs and the revenues, and also in 22 part -- I think that I see this in some court 23 opinions, and it can be -- for somebody who is 24 speaking maybe a little more freely about 25 principles as opposed to, like, using words as</p>
<p style="text-align: right;">Page 83</p> <p>1 you tell me the -- where those numbers come from 2 in your report; certain schedule? 3 A. Let's see if I can find it quickly. I can make a 4 note to look for that over -- since we have a 5 break coming up. I think that's -- that's a fair 6 question that's not cited to. Rather than sit 7 here, I can't find it immediately, but I know it's 8 somewhere. I'll find out and get back to you. 9 Q. Okay. Generally what was your process when you -- 10 talking about copyright disgorgement and the gross 11 written premiums that form the base of that award, 12 what was your process in identifying the gross 13 written premiums that are at issue in this case? 14 A. So there was -- let's see if we're talking about 15 the same thing. So there were discovery requests, 16 and there were responses that occurred over a 17 period of time, and then there were refinements 18 that were made to that information and then 19 spreadsheet that was produced, and generally 20 speaking, my -- my process involved understanding 21 that information, the context of the answers, what 22 happened in the response, and how Mr. Zoltowski 23 characterized it. Trying to combine all that 24 together. 25 Q. In Paragraph 193 you write, "Federal is entitled</p>	<p style="text-align: right;">Page 85</p> <p>1 terms of art, I think that costs can also relate 2 to apportionment. There's conceptually -- there 3 can be revenues that are unrelated that need to be 4 subtracted out that some people see like cost 5 deductions. 6 Q. Understood, but in Paragraph 193, you're just 7 talking about what a normal lay person would refer 8 to as a cost and expense; correct? 9 A. I think so. I think within the context of that 10 paragraph appearing in the middle of a -- a longer 11 discussion. 12 Q. For the costs -- and -- and you did some work to 13 deduct costs from the revenue stream identified by 14 Mr. Zoltowski; correct? 15 A. Some. 16 Q. Some, and when you were doing that work, did you 17 take into consideration whether any of the costs 18 you were working with were fixed available, 19 semi-variable? 20 A. Of course. 21 Q. And how did -- in what way? How did that impact 22 your analysis? 23 A. So I wanted to understand how the costs behaved, 24 and I described that in -- above that paragraph 25 and below that paragraph and looked at specific</p>

<p style="text-align: right;">Page 86</p> <p>1 categories of costs, and I described those, like, 2 I went first, second, third. I describe what the 3 financial and economic relationship is to the 4 revenues that were identified, and then I think 5 overriding all this, I see this issue come up, 6 when people overreach in terms of revenues, they 7 miss a basic principle, or when there's a wide 8 variety of revenues -- a wide range of revenues 9 that are identified. 10 If you're identifying a wide range of 11 revenues, you're going to need a wide range of 12 costs to support those revenues. It's not 13 reasonable to think that those -- those wide range 14 of revenues can just exist without costs to 15 support them, and I didn't see that in Mr. 16 Zoltowski's report at all, but that's a principle 17 that I think applies to everything that I'm 18 describing here. 19 I discuss direct variable costs, for 20 example, in Paragraph 197. I use that same 21 terminology in -- in that paragraph. 22 Q. You mentioned earlier you wanted -- you wanted to 23 understand how costs behave. Why, when you were 24 doing your analysis, did you want to understand 25 how costs behave?</p>	<p style="text-align: right;">Page 88</p> <p>1 A. I think when you're identifying such a broad range 2 of revenues, when you're identifying all the 3 revenues, you need to subtract all the costs. 4 That's one way to respond to your question. So 5 all the costs apply that I've identified in my 6 report. 7 I think that Mr. Zoltowski identifies a 8 narrower stream of revenues, or if in some way the 9 -- the fact finder has a narrower stream of 10 revenues than what Mr. Zoltowski identifies, then 11 we can think about each of these categories that 12 -- that I've described in my report and whether or 13 not they behave in a way that's linked to the 14 revenue stream. 15 Q. Is direct another way to refer to a fixed cost? 16 A. No. 17 Q. They are different? 18 A. Yes. 19 Q. How are they different? 20 A. They are -- in some ways, they are the opposite. 21 Q. Explain that to me. 22 A. Well, sometimes fixed costs don't have any 23 relationship to -- to anything, they are just 24 costs, and in that case, they wouldn't be direct, 25 but that's when they would be the opposite, but at</p>
<p style="text-align: right;">Page 87</p> <p>1 A. So that the appropriate costs can be identified in 2 relation to the revenue stream that Mr. Zoltowski 3 is setting forth, and then I tried to make my 4 analysis and my description as flexible as 5 possible due to the -- due to two reasons. 6 One, the systematic errors in Mr. 7 Zoltowski's report, and two, you know, sometimes 8 what I'll see in a situation like this is where 9 there's a initial report, and a rebuttal report, 10 and a reply report that in the reply the 11 plaintiff's expert will recognize that, hey, you 12 know, Mr. Bakewell had some things that he 13 observed that I really should account for in my 14 analysis and make some adjustments. An expert 15 like Mr. Zoltowski often will do that. So I 16 wanted to write my report in a way that permitted 17 that sort of interaction. 18 Q. You mentioned that you -- you wanted to understand 19 how the costs behave so that the appropriate costs 20 could be identified. What do you mean by an 21 appropriate cost? 22 A. Costs that are deductible and attributable to the 23 revenues that are appropriate. 24 Q. So what would be an inappropriate cost, a cost 25 that couldn't be deducted?</p>	<p style="text-align: right;">Page 89</p> <p>1 other times, when -- if you accuse a wide range of 2 revenues, you need fixed costs to support those 3 revenues, and when you look over a long period of 4 time as a business, you can manage your costs and 5 make them move along with the revenues, then those 6 fixed costs become variable. 7 So it's not an absolute rule that fixed 8 costs and direct costs can mean the opposite 9 thing, but sometimes it can. 10 Q. So for the fixed costs that you deducted here, did 11 you undertake any investigation to determine if 12 Federal had managed those costs and made them move 13 along with revenues? 14 A. I did, and which fixed costs are you -- what are 15 you calling fixed costs? Because I don't think I 16 deducted fixed costs in the sense of the costs 17 that relate to the revenue that Mr. Zoltowski 18 identified. 19 As I mentioned earlier, all costs that 20 might be fixed, if you're looking at them 21 narrowly, become variable over time. I think you 22 recognized that when you asked me the question, 23 but I don't know what fixed costs you have in 24 mind. You seem to have something when you asked 25 me that.</p>

<p style="text-align: right;">Page 90</p> <p>1 Q. We'll get to that further when I have examples in 2 front of us. Can you define for me the phrase 3 stream of revenue? 4 MR. FLEMING: I take it you're asking in 5 connection with a paragraph in his report as 6 opposed to in general. 7 MS. KLIEBENSTEIN: Well, he just brought up 8 that phrase in his testimony about -- I think it 9 was in the context of if the court identifies a 10 certain stream of revenue, and I just wanted to 11 make sure I knew what that phrase meant. 12 THE WITNESS: It would be an amount and the 13 nature of those revenues. That's what I was 14 referring to. 15 BY MS. KLIEBENSTEIN: 16 Q. An amount -- an amount and the nature of those 17 revenues. I don't -- I don't understand that. 18 Can you try me again? 19 MR. FLEMING: Try you again in -- 20 BY MS. KLIEBENSTEIN: 21 Q. Try to answer that again in a different way 22 that ... 23 A. I think it's pretty clear, but let's say that you 24 have a business where you're cutting lawns and 25 you're trimming trees, and it's a yard service</p>	<p style="text-align: right;">Page 92</p> <p>1 written premium dollars are reported in -- let's 2 focus on Interrogatory 17, that one. 3 A. Okay. 4 Q. Do you have an understanding of what revenue 5 stream is reported in response to Interrogatory 6 Number 17? 7 A. I do. 8 Q. What is that? 9 A. Let me find it here. 10 Q. Go to Page 10. If that helps. 11 A. Thank you. I think the answer does a pretty 12 decent job of explaining this, especially the 13 objections. 14 The issue here is that these are businesses 15 that have revenue streams that aren't driven by 16 the Blaze Advisor software, and so Federal doesn't 17 really keep its records in the way that's 18 requested under Interrogatory 17, and the 19 information that's provided is kind of a best 20 effort to respond to this request, which doesn't 21 really match ordinary course recordkeeping, and 22 that's reflected in the objections and provides 23 context for some of these numbers, really all of 24 the numbers. 25 Q. The interrogatory asked for gross written premiums</p>
<p style="text-align: right;">Page 91</p> <p>1 business, and one stream of revenues might come 2 from trimming trees, and the other would be from 3 cutting the lawns, and you can call each of those 4 streams of revenues. 5 Q. Okay. 6 (Whereupon material was marked for 7 identification as Exhibit 523.) 8 BY MS. KLIEBENSTEIN: 9 Q. I'm handing you what's been marked as Exhibit 523. 10 This is a verified copy of Federal's responses to 11 interrogatory numbers 16 and 17. Have you seen 12 this document before? 13 A. I think so. 14 Q. And is it your understanding that Mr. Zoltowski 15 used his baseline for the gross written premiums 16 identified in his report Federal's responses to 17 interrogatories, including the answers in Exhibit 18 524 -- 23? 19 A. Well, he can speak for himself, but I think 20 generally speaking that's true. I'd have to 21 double -- I wish I had that type of memory where I 22 could tell you this is what he used specifically, 23 but generally, he used a document like this. 24 Sure. 25 Q. And do you have an understanding of what gross</p>	<p style="text-align: right;">Page 93</p> <p>1 for insurance policies in connection with which 2 the Blaze Advisor software was used; correct? 3 A. Sort of. Not entirely. 4 Q. Not sure? 5 A. That's not what I said at all. 6 Q. Okay. 7 A. I said sort of, not entirely. I was saying that 8 your question wasn't accurate. I wasn't saying 9 that I had any lack of certainty on my answer. 10 Q. So with regard to the response in Interrogatory 11 Number 17, for the gross written premiums that are 12 listed, do you know one way or the other whether 13 those gross written premiums run through 14 applications in connection with which Blaze 15 Advisor software was used? 16 A. What do you mean run through applications? You 17 lost me where you're starting to use that 18 terminology. What -- what are you referring to, 19 or where are you getting those words? 20 Q. Looking at -- you did not use the gross written 21 premium in response to Interrogatory Number 17 to 22 calculate gross written premium figures in your 23 report; is that right? 24 A. I went to the underlying source and attempted to 25 solve the problem, at least some of the problem</p>

<p style="text-align: right;">Page 94</p> <p>1 that is identified in the -- from the context of</p> <p>2 this.</p> <p>3 So I think this all can be traced to the</p> <p>4 same source, but there's additional analysis that</p> <p>5 needs to be done to this information. So I think</p> <p>6 the answer is kind of a yes and no.</p> <p>7 Q. Looking at Exhibit 6, Exhibit 6 in your report.</p> <p>8 A. Okay.</p> <p>9 Q. I see a total of 14 billion under the select gross</p> <p>10 written premiums. Do you see that as well?</p> <p>11 A. No. Where are you?</p> <p>12 Q. At the top of Exhibit 6.</p> <p>13 A. I see that number.</p> <p>14 Q. And from what document did that number come from?</p> <p>15 A. Blaze IM --</p> <p>16 (Whereupon the reporter asked the witness</p> <p>17 to repeat the answer.)</p> <p>18 THE WITNESS: It's a document called Blaze</p> <p>19 IM Abstract-Final. It's not a document -- well, I</p> <p>20 guess it's a document. Sort of. It's a file.</p> <p>21 BY MS. KLIEBENSTEIN:</p> <p>22 Q. So that number did not come from the response to</p> <p>23 Interrogatory Number 17?</p> <p>24 A. Yes and no. It came from the same source, but</p> <p>25 there's additional -- this is overinclusive by</p>	<p style="text-align: right;">Page 96</p> <p>1 Number 17 includes policies and do not touch Blaze</p> <p>2 Advisor in any way?</p> <p>3 A. I think that that's a possibility what -- driven</p> <p>4 by the difficulty of answering this question where</p> <p>5 Blaze Advisor doesn't generate revenue and there's</p> <p>6 not revenues kept that are attributable to Blaze</p> <p>7 Advisor. So what Federal tried to do is -- is</p> <p>8 provide information that is -- if it's going to</p> <p>9 err in its estimates err on the side of being</p> <p>10 overinclusive, and so it seems to me that there's</p> <p>11 going to be instances that fit the description you</p> <p>12 just provided by definition of the way that it</p> <p>13 responded.</p> <p>14 Q. Do you know for a fact that there are policies</p> <p>15 included in the response to Interrogatory 17 that</p> <p>16 do not touch Blaze Advisor in any way?</p> <p>17 A. In any way at all?</p> <p>18 Q. Correct.</p> <p>19 A. Depends how you define that.</p> <p>20 Q. Let's take CSI Express. Let me ask it a different</p> <p>21 way. The interrogatory responses only list policy</p> <p>22 counts for policies that run through applications</p> <p>23 that contain Blaze Advisor; correct?</p> <p>24 A. Where is that?</p> <p>25 Q. Well, the table at the top on Page 11 is</p>
<p style="text-align: right;">Page 95</p> <p>1 definition, and the objections and the context of</p> <p>2 this I think it makes it clear that it's</p> <p>3 overinclusive. Mr. Zoltowski should have</p> <p>4 understood that.</p> <p>5 Q. In what way is the response to Interrogatory</p> <p>6 Number 17 overinclusive?</p> <p>7 A. Because it includes what Federal is trying to do</p> <p>8 is respond specifically to this question in I</p> <p>9 think maybe an overinclusive way. So it's at</p> <p>10 least -- it doesn't want to be accused of making</p> <p>11 judgments or reducing the number arbitrarily, and</p> <p>12 so what Federal is saying in this answer is that,</p> <p>13 look, we don't keep information about Blaze</p> <p>14 Advisor having gross written premiums because</p> <p>15 Blaze Advisor doesn't generate gross written</p> <p>16 premiums, but what we're going to do is give you</p> <p>17 the information of companies that used Blaze</p> <p>18 Advisor, and what can happen here is that -- and</p> <p>19 it does happen here and why you need to go to the</p> <p>20 -- to the underlying document that I described is</p> <p>21 that the same policy could be written, and it</p> <p>22 could be counted multiple times using the way the</p> <p>23 data is produced. That's my understanding.</p> <p>24 Q. Separate from the multiple counting issue, is it</p> <p>25 your position that the response to Interrogatory</p>	<p style="text-align: right;">Page 97</p> <p>1 DecisionPoint; right?</p> <p>2 A. Yes.</p> <p>3 Q. And that's an application that contains Blaze</p> <p>4 Advisor; correct?</p> <p>5 A. Yes.</p> <p>6 Q. CSI Express is right below that along with ARP and</p> <p>7 profitability indicator; correct?</p> <p>8 A. Yes.</p> <p>9 Q. And those use Blaze Advisor; correct?</p> <p>10 A. As part of that. They have Blaze Advisor in them.</p> <p>11 Q. Yes. I'll agree with that. So those policies</p> <p>12 that run through DecisionPoint and CSI Express I</p> <p>13 will call those policies as touching Blaze</p> <p>14 Advisor.</p> <p>15 A. I wouldn't.</p> <p>16 Q. Why not?</p> <p>17 A. Because they don't necessarily touch it. You have</p> <p>18 to look at the business flow and the business</p> <p>19 process and see whether they actually do it, and</p> <p>20 the business process there's some ORG charts or</p> <p>21 business process charts that show how it's</p> <p>22 relatively complicated, and there may be instances</p> <p>23 where you could write a policy where you don't use</p> <p>24 Blaze Advisor, at least in concept.</p> <p>25 You'd have to go through and trace through</p>

<p style="text-align: right;">Page 98</p> <p>1 every single instance and see whether or not it</p> <p>2 did or had to according to the business process</p> <p>3 the flow charts, and my recollection is is that</p> <p>4 those flow charts are relatively complicated, and</p> <p>5 if you trace them through, sort of like you trace</p> <p>6 through a -- in -- in, like, a maze, sometimes you</p> <p>7 may hit Blaze Advisor, and sometimes you may not,</p> <p>8 and my understanding from the people who pulled</p> <p>9 this information together is that it wouldn't</p> <p>10 really be possible to go through and trace through</p> <p>11 every single written policy that went through the</p> <p>12 business process that I'm discussing, and so the</p> <p>13 assumption was made that they'll -- they included</p> <p>14 instances that could in concept touch Blaze</p> <p>15 Advisor but don't necessarily do it.</p> <p>16 So they wanted to be -- when they pulled</p> <p>17 this information, Federal wanted to be responsive,</p> <p>18 and to the extent it produced information be</p> <p>19 overinclusive as opposed to under-inclusive.</p> <p>20 Q. So if I'm understanding you right, there could be</p> <p>21 a policy that goes through DecisionPoint, for</p> <p>22 example, the application, and it goes through a</p> <p>23 part of DecisionPoint that doesn't touch Blaze</p> <p>24 Advisor?</p> <p>25 A. I'd have to look at DecisionPoint and the process,</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. Do you have any specific examples of any of gross</p> <p>2 written premiums listed on Interrogatory Number 17</p> <p>3 that run through the applications listed but do</p> <p>4 not touch Blaze Advisor?</p> <p>5 A. I don't know that I can give you an example. I'd</p> <p>6 have to talk to a business person.</p> <p>7 Q. And there were other similar -- there were other</p> <p>8 interrogatory responses, this one is in the US,</p> <p>9 there's others for the Canada, Australia, and the</p> <p>10 EU, UK. Do you understand that as well?</p> <p>11 A. Yes.</p> <p>12 Q. And is your critique of those interrogatory</p> <p>13 responses the same?</p> <p>14 A. I'm not critiquing the interrogatory responses,</p> <p>15 and I want to say something here for the record</p> <p>16 that I think that what Mr. Zoltowski is saying and</p> <p>17 accusing Federal of, frankly, he should retract,</p> <p>18 and to the extent he's accusing me of doing</p> <p>19 something, he should retract those statements. He</p> <p>20 should go back and look at what he wrote and --</p> <p>21 and consider the allegations he's making. They</p> <p>22 are very serious.</p> <p>23 I think that what's happening here is that</p> <p>24 a company, Federal, is trying to be responsive to</p> <p>25 requests for information that doesn't exist, and</p>
<p style="text-align: right;">Page 99</p> <p>1 the flow chart that I talked about and try to</p> <p>2 figure that out on my own and see if I could.</p> <p>3 I would -- I think a more efficient way to</p> <p>4 get an answer to that question is go directly to</p> <p>5 somebody from the company.</p> <p>6 So without saying that that -- if we're</p> <p>7 using that as a -- as an example, as opposed to</p> <p>8 something that's, like, absolutely true, I'd use</p> <p>9 that as an example to describe the type of</p> <p>10 critical thinking that you'd have to go through in</p> <p>11 understanding the data and how it was compiled.</p> <p>12 Q. So taking Interrogatory Number 17, this response</p> <p>13 in particular, you believe the data is</p> <p>14 overinclusive; is that right?</p> <p>15 A. Sort of. In the way that's described, I think</p> <p>16 it's -- it's clear that that's how it was</p> <p>17 compiled. So in one way, it's not. In one way,</p> <p>18 it's responsive directly and therefore not</p> <p>19 overinclusive because it's described, the</p> <p>20 assumptions are described, but when it gets down</p> <p>21 to trying to use it for the things that Mr.</p> <p>22 Zoltowski tried to use it for, yes, it's</p> <p>23 overinclusive.</p> <p>24 That's the issue that I describe in detail</p> <p>25 in my report.</p>	<p style="text-align: right;">Page 101</p> <p>1 it should be considered in that context, and so to</p> <p>2 try to accuse me, and I don't know if you did this</p> <p>3 on purpose or not with your last question of doing</p> <p>4 something wrong or misleading, I -- I take</p> <p>5 exception to.</p> <p>6 Q. No. I'm just trying to understand your position</p> <p>7 as to why the interrogatory responses are not --</p> <p>8 shouldn't be the starting point for gross written</p> <p>9 premium.</p> <p>10 A. They can be the starting point, but they need to</p> <p>11 be considered in their context. They shouldn't be</p> <p>12 taken out of context or be considered myopically.</p> <p>13 There's a whole back and forth and there's context</p> <p>14 for this interrogatory and the response. There</p> <p>15 is. It's lengthy.</p> <p>16 Q. I know it well.</p> <p>17 A. It's lengthy.</p> <p>18 Q. Mr. Fleming and I lived that for a year. So I'm</p> <p>19 trying to do this efficiently without going</p> <p>20 through each of the interrogatories, but we can do</p> <p>21 that if you would like.</p> <p>22 So we've got Interrogatories 18, 19, and 20</p> <p>23 that ask for the same information but for</p> <p>24 different geographies. You're aware of that;</p> <p>25 correct?</p>

<p style="text-align: right;">Page 102</p> <p>1 A. Yes.</p> <p>2 Q. And your opinions regarding the data that's</p> <p>3 reported in Interrogatory Number 17 are those</p> <p>4 opinions the same for the data reported in 18, 19,</p> <p>5 and 20?</p> <p>6 A. Are the -- I didn't hear the word you said, the</p> <p>7 issues?</p> <p>8 Q. Your opinions relating to the data.</p> <p>9 A. Well, I don't know that they are actually</p> <p>10 opinions. I'm trying to ground this in facts, and</p> <p>11 I think that those facts that you and I just</p> <p>12 discussed apply to these interrogatory responses</p> <p>13 in context. Those aren't my opinions.</p> <p>14 MS. KLIEBENSTEIN: Terry, I'm going to give</p> <p>15 you this one.</p> <p>16 (Whereupon material was marked for</p> <p>17 identification as Exhibit 524.)</p> <p>18 MS. KLIEBENSTEIN: I'm going to mark</p> <p>19 Exhibit 525 -- 524.</p> <p>20 MR. FLEMING: I'm wondering --</p> <p>21 MS. KLIEBENSTEIN: I have a paper bit too.</p> <p>22 MR. FLEMING: What are you going to have</p> <p>23 Mr. Bakewell use?</p> <p>24 MS. KLIEBENSTEIN: I wanted him -- I was</p> <p>25 wondering if he could just look at your screen to</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. Yes, and I want you to confirm looking on Mr.</p> <p>2 Fleming's laptop whether the text file in Exhibit</p> <p>3 525 -- actually the text file in Exhibit 524 is</p> <p>4 that file Blaze IM extract-final.</p> <p>5 MS. KLIEBENSTEIN: Do you have it up Terry?</p> <p>6 MR. FLEMING: Do not. You know what? I</p> <p>7 don't want to use up all your time. You can find</p> <p>8 it quicker than I can.</p> <p>9 MS. KLIEBENSTEIN: Are you on the thumb</p> <p>10 drive?</p> <p>11 MR. FLEMING: I can't ...</p> <p>12 THE WITNESS: Sometimes your computer</p> <p>13 doesn't work, it happens with mine, it doesn't</p> <p>14 recognize when you put a thumb drive in there,</p> <p>15 can't figure out what's going on.</p> <p>16 MR. FLEMING: Do you want us to use --</p> <p>17 BY MS. KLIEBENSTEIN:</p> <p>18 Q. Mr. Bakewell, let's turn to Exhibit 525.</p> <p>19 A. Okay.</p> <p>20 Q. And I'll represent to you what we're looking at is</p> <p>21 the first viewable screenshot of what is in that</p> <p>22 text file, and does this look like the first</p> <p>23 viewable screen from the file titled Blaze IM</p> <p>24 Extract Final?</p> <p>25 A. I don't know if it's the first viewable screen,</p>
<p style="text-align: right;">Page 103</p> <p>1 authenticate what it is, and then we can go to the</p> <p>2 paper to discuss.</p> <p>3 MR. FLEMING: Okay.</p> <p>4 MS. KLIEBENSTEIN: That's all.</p> <p>5 (Whereupon material was marked for</p> <p>6 identification as Exhibit 525.)</p> <p>7 BY MS. KLIEBENSTEIN:</p> <p>8 Q. Mr. Bakewell, your counsel has a native text file</p> <p>9 on a thumb drive on his computer, and I'm handing</p> <p>10 you what I've now marked as Exhibit 525, which is</p> <p>11 a snip of the -- the first screen viewable --</p> <p>12 viewable page of that text file, if you will, and</p> <p>13 I want to confirm what we're looking at. I see in</p> <p>14 your report there's a reference to a file called</p> <p>15 CUW/Blaze IM Extract?</p> <p>16 A. Which page are you referring to? By the way, he's</p> <p>17 not my counsel. Just so you know.</p> <p>18 Q. Fair -- fair enough.</p> <p>19 A. Which page are you referring to.</p> <p>20 Q. Blaze IM Extract is Exhibit 6 on the third page.</p> <p>21 A. Okay.</p> <p>22 Q. At the top. I was provided --</p> <p>23 A. Oh. I see. Got it. Blaze IM Extract-Final.</p> <p>24 This is what I was referring to earlier is that --</p> <p>25 you're saying it's that file.</p>	<p style="text-align: right;">Page 105</p> <p>1 but it looks familiar, and I'll accept your</p> <p>2 representation if we're looking at the right</p> <p>3 document. We can do that.</p> <p>4 Q. I think I am. We got this with a Bates number.</p> <p>5 It was identified as something different in your</p> <p>6 report so that's what we're trying to sort out.</p> <p>7 Maybe Terry can help.</p> <p>8 A. We try.</p> <p>9 MR. FLEMING: I can't help by looking at it</p> <p>10 on my computer.</p> <p>11 BY MS. KLIEBENSTEIN:</p> <p>12 Q. Let's go through each of the columns. They don't</p> <p>13 have headers so we're struggling with how to</p> <p>14 interpret the data.</p> <p>15 Can you identify for me what information is</p> <p>16 contained in each of the columns?</p> <p>17 A. I can. I think there's a policy number on the</p> <p>18 left, and then there's two more columns that have</p> <p>19 the applicable dates, the beginning -- well, these</p> <p>20 seem to be the same date. I think that's -- well,</p> <p>21 some of them have different dates. I need to</p> <p>22 check and see. The next one I think is the</p> <p>23 company that wrote the policy. The next one is</p> <p>24 the type in general, and then there's a</p> <p>25 subcategory, and then there's an amount.</p>

<p style="text-align: right;">Page 106</p> <p>1 Q. Do you recall what the -- did you ask Federal to 2 prepare this data set? 3 A. I think I see it as a request that we've both made 4 frankly. 5 Q. Why? 6 A. Because Federal is trying to respond to your 7 interrogatories, and then I said, hey, we need to 8 do some more analysis of this if I understand this 9 data correctly, and so we got the native file. 10 Q. And what does this file represent? What type of 11 information is in the file? 12 A. It's the underlying data behind the response to 13 the interrogatory. I think. 14 Q. And how did you use this data in preparing your 15 report? 16 A. To try to eliminate the double counting issue that 17 I described in my report. 18 Q. And walk me through the steps that you did -- walk 19 me through the steps that you took with respect to 20 this data in Exhibit 525. What did you do to 21 eliminate the double counting as you see it? 22 A. We used Excel and did sorts. 23 Q. Sorted for what? 24 A. Multiple -- same policy number. 25 Q. So you sorted for -- you said multiple, same</p>	<p style="text-align: right;">Page 108</p> <p>1 reply report where he didn't endeavor to use this 2 data at all, and so I don't think it's factually 3 correct for you to say he didn't have access to 4 this information because he issued a report, his 5 reply report where he clearly had access to this. 6 Q. Do you know how Federal queried their system to 7 identify the policies identified in this data set? 8 A. I did at one point in time. I asked about that. 9 Q. And do you know what criteria Federal used to 10 identify the relevant records? 11 A. I think it asked if the criteria used are 12 consistent with the interrogatory requests. 13 Q. And do you know what policies Federal included in 14 this data set? 15 A. All of the ones that it described in the 16 interrogatory as having the relationship to Blaze 17 Advisor that's described in the interrogatory and 18 the response. 19 Q. So the text file in Exhibit 524 is the underlying 20 data or is the underlying policy information for 21 the data shown in Interrogatory Number 17? 22 A. That's my understanding. It comes from the same 23 system of record. 24 Q. So looking at -- looking at Exhibit 525 and 524, 25 how do I know which policies went through</p>
<p style="text-align: right;">Page 107</p> <p>1 policy number. You sorted for the multiple same 2 policy number? 3 A. Maybe I said that, but I didn't mean to say it 4 exactly like that. There's instances -- there's 5 multiple instances where the same policy number 6 would exist in a row. So we sorted by policy 7 number and identified instances where there's the 8 same policy number and where the amount would have 9 been included under the categories identified in 10 Mr. Zoltowski's report more than once and 11 corrected it so that it only -- well, corrected 12 isn't the right word, studied it so that we only 13 counted that same policy once to arrive at the 14 correct result. Unlike Mr. Zoltowski. So the 15 correction is to what Mr. Zoltowski did. 16 Q. And Mr. Zoltowski did not have access to the data 17 in Exhibit 524; correct? 18 A. I don't think that's true. 19 Q. I'll represent to you that Exhibit 524 was not 20 produced during discovery. 21 A. He could have asked for it. My experience is that 22 that would be a -- a customary thing to ask for 23 and to study. It doesn't -- that's neither here 24 nor there from my perspective. I'm not faulting 25 Mr. Zoltowski for doing that, but he did have a</p>	<p style="text-align: right;">Page 109</p> <p>1 DecisionPoint, CSI Express, CUW, the applications 2 that are listed in Interrogatory Number 17? 3 A. I think based upon what I see here in 525 and the 4 interrogatory response there -- there is some 5 assumptions that were made regarding which of 6 these descriptions went into which category. 7 Q. When you say some assumptions were made regarding 8 which of these descriptions went into which 9 category, which descriptions and which category 10 are you referring to? 11 A. The descriptions in Bakewell 525 and the 12 categories provided in the interrogatory response 13 and -- done. Period. I wouldn't say and. 14 Q. And what were those assumptions? 15 A. I'm just looking to see if we actually need to 16 make those assumptions from the gross written 17 premium information. I think we're just 18 eliminating the multiple instances of the same 19 policy occurring and eliminating double counting 20 in that way, and then we check it against business 21 segment income statements, as I describe in 22 Section 4.3. 23 So I can go back and double check and see 24 if we have further information that might be 25 helpful to -- if Mr. Zoltowski has an interest in</p>

<p style="text-align: right;">Page 110</p> <p>1 analyzing this data, I would be happy to do that, 2 but I'd have to discuss that with -- I mean, that 3 relates to whatever the discussions you've been 4 having with Mr. Fleming. I think you have all the 5 information that we do. 6 Q. But you agree that we don't have the know-how on 7 our end to figure out how to reconcile the text 8 file with the interrogatory responses; correct? 9 A. I can't agree with that. 10 Q. Well, sitting here today, you're having a hard 11 time explaining how I could replicate your 12 results; correct? 13 A. No. 14 Q. So then can you walk me through how I could use 15 Exhibits 5 -- Exhibit 524 and Interrogatory Number 16 17 to address the double counting issue that you 17 see? 18 A. I would do just what I said and sort that data by 19 policy number and figure out where the same policy 20 occurs more than once, and I was trying to be 21 helpful to you by describing other things that -- 22 comparisons that you might do. 23 Q. So I could sort -- 24 A. But I said very clearly in my answer, and if 25 that's how you want this to proceed, I'd be happy</p>	<p style="text-align: right;">Page 112</p> <p>1 sort first by Column A, and then I would sort by 2 Column D, and Column E, and Column F, and I would 3 make subtotals for each of those, and where 4 there's policy numbers that appear more than once, 5 I would look to eliminate the policy that appears 6 more than once and compare those to the totals 7 that I have, and then where I've categorized it by 8 entity, according to this sort that I've just 9 done, as well as -- that's Column D and Column E 10 and F, I would match those sorts up against what 11 you've accused in this case and the application 12 that uses Blaze Advisor, and those are your 13 accusations. So that's how I would do that. 14 Pretty straightforward. Surprised Mr. 15 Zoltowski didn't do it. Instead, he made 16 accusations that I think he should retract. 17 Q. Let's move to Paragraph 82, and then we can take a 18 break for lunch. 19 A. Okay. Page 82 or Paragraph 82? I forgot. 20 Q. Paragraph, but it might be the wrong -- maybe it's 21 182. 22 MR. FLEMING: Which one? 23 THE WITNESS: That's what we're trying to 24 figure out. 25 MS. KLIEBENSTEIN: 182.</p>
<p style="text-align: right;">Page 111</p> <p>1 to go that way. If you're going to characterize 2 me being helpful as struggling, then I'll stop 3 trying to be helpful, and I'll just give you 4 specific answers to your questions. 5 Q. So I can sort the data -- Step 1 is to sort the 6 data to figure out where there's duplicative 7 policy numbers; right? 8 A. Correct. 9 Q. But then the link that I'm struggling with is how 10 do I know which policy went through the different 11 applications? 12 A. I would categorize -- I would do another sort by 13 the description, the categories, the following 14 three categories with verbal, with text, and I 15 would compare those to the business process 16 records that you also have copies of to map those 17 against what you've accused. I mean, this is your 18 lawsuit you're making the accusations of using 19 Blaze Advisor. 20 So I would sort this -- here is what I 21 would do, if you want to answer the question that 22 you just posited, I'll give you even more detail. 23 I would sort this by column, and let's -- let's 24 seem that each of these columns follows what Excel 25 has with Column A, B, C, D, et cetera. I would</p>	<p style="text-align: right;">Page 113</p> <p>1 BY MS. KLIEBENSTEIN: 2 Q. Going to Paragraph 184, there's a statement again, 3 "The CUW gross written premium data relied on by 4 Mr. Zoltowski included policies and associated 5 gross written premiums that were captured multiple 6 times in the data for other applications such as 7 CSI Express and Premium Bookings." Your source 8 there is an interview with Mr. McCarthy? 9 A. Correct. 10 Q. And he's the industry expert? 11 A. The industry expert? I don't think so. Let me 12 see. 13 Q. Who is Mr. McCarthy? 14 A. Chase McCarthy is the information technology lead. 15 He's an employee. 16 Q. And how many conversations did you have with Mr. 17 McCarthy? 18 A. One. 19 Q. And what is -- I know his job title. What is his 20 role? What does he do at Federal? 21 A. I think he works in the information technology 22 group. 23 Q. And did he pull this -- this data? 24 A. I don't know if he pulled it, but he was familiar 25 with it, and he was prepared to answer these</p>

<p style="text-align: right;">Page 114</p> <p>1 questions.</p> <p>2 Q. What did you talk with Mr. McCarthy about?</p> <p>3 A. How he pulled the information, or Federal pulled</p> <p>4 the information.</p> <p>5 Q. Anything else?</p> <p>6 A. I think anywhere I cite to him in my report that's</p> <p>7 what I would have spoken with him about. So I</p> <p>8 don't see anything else. I think that I asked him</p> <p>9 about the -- the data and whether it included</p> <p>10 policies that were captured multiple times, like I</p> <p>11 discussed, and he confirmed that it did because of</p> <p>12 the reasons that we discussed earlier, the</p> <p>13 interrogatory and the response, and the challenges</p> <p>14 that Federal had in responding because the</p> <p>15 interrogatory doesn't match what it does in the</p> <p>16 ordinary course of business.</p> <p>17 MS. KLIEBENSTEIN: All right. We can take</p> <p>18 a break for lunch.</p> <p>19 THE WITNESS: All right. Thank you.</p> <p>20 THE VIDEOGRAPHER: We are going off the</p> <p>21 report. The time now is 12:51 p.m.</p> <p>22 (Whereupon a lunch break was taken from</p> <p>23 12:51 p.m. to 1:41 p.m.)</p> <p>24 THE VIDEOGRAPHER: We are back on the</p> <p>25 record. This marks the beginning of Media 4 in</p>	<p style="text-align: right;">Page 116</p> <p>1 sources are generally from Exhibit 8, but I think</p> <p>2 it would be helpful if I gave you a work paper as</p> <p>3 well to show where the sources came from, and so I</p> <p>4 spoke with Mr. Fleming and we agreed that I'll</p> <p>5 give that to him, and then he will give that to</p> <p>6 you.</p> <p>7 Q. Okay.</p> <p>8 A. I don't know, in the next couple of days or</p> <p>9 whatever.</p> <p>10 Q. So the support is Exhibit 8?</p> <p>11 A. Generally speaking, but the specific numbers you</p> <p>12 have to do a couple of things to them, and we have</p> <p>13 a work paper that describes that.</p> <p>14 Q. Okay.</p> <p>15 A. It should make it totally clear.</p> <p>16 Q. So going back to Exhibit 5.</p> <p>17 A. Okay.</p> <p>18 Q. Exhibit 5, the gross written premium figures take</p> <p>19 care of that double counting issue that you</p> <p>20 raised; correct?</p> <p>21 A. Correct.</p> <p>22 Q. And then I see a number at the bottom of the first</p> <p>23 page, about 2.456 billion, and what does that</p> <p>24 number reflect?</p> <p>25 A. That's the profit, the underwriting profit</p>
<p style="text-align: right;">Page 115</p> <p>1 the deposition of Chris Bakewell. The time now is</p> <p>2 1:42 p.m.</p> <p>3 BY MS. KLIEBENSTEIN:</p> <p>4 Q. Mr. Bakewell, can you turn to Exhibit 5 of your</p> <p>5 report.</p> <p>6 A. Sure.</p> <p>7 Q. Can you explain to me at a 10,000 foot level what</p> <p>8 data -- what calculations are shown in Exhibit 5?</p> <p>9 A. So in Exhibit 5, we're using, or I'm using the</p> <p>10 actual numbers versus what Mr. Zoltowski used to</p> <p>11 eliminate the double counting issue that we</p> <p>12 discussed earlier, and that's detailed in Exhibit</p> <p>13 6. We were going through Exhibit 6 earlier.</p> <p>14 Q. Okay. So the --</p> <p>15 A. Go ahead.</p> <p>16 Q. No. Go ahead.</p> <p>17 A. I was going to volunteer something that related to</p> <p>18 a question you asked me earlier that I promised to</p> <p>19 get you something during lunch.</p> <p>20 Q. Sure.</p> <p>21 A. You want to do that now?</p> <p>22 Q. Yeah.</p> <p>23 A. So you were asking about Paragraph 180.</p> <p>24 Q. Yes. The citation for that.</p> <p>25 A. There's a table underneath there, and the -- the</p>	<p style="text-align: right;">Page 117</p> <p>1 assuming a 16 percent profit margin.</p> <p>2 Q. Assuming a 16 percent profit margin, or is the</p> <p>3 result a 16 percent profit margin?</p> <p>4 A. Either way.</p> <p>5 Q. Essentially the -- what figures did you add and</p> <p>6 subtract to get the 2.456?</p> <p>7 A. I think it's the -- if you take 16 percent of</p> <p>8 14.14 -- oh. Well, there are specific numbers for</p> <p>9 -- so 16 percent of 16.1 million equals 2.45</p> <p>10 million -- 2.45 billion and 16.2 billion on the</p> <p>11 top line.</p> <p>12 Q. And where did the 16 percent come from?</p> <p>13 A. That comes from the 8 series of exhibits. So</p> <p>14 Exhibit A, where it says percent net earned</p> <p>15 premiums in 2018, that's 16 percent and the loss</p> <p>16 ratio of 18.4 percent.</p> <p>17 Q. So here is what I'm trying to clarify. These</p> <p>18 percentages came from other calculations that you</p> <p>19 did, not from, like, an industry publication or</p> <p>20 anything like that?</p> <p>21 A. That's not exactly right, but I -- I considered</p> <p>22 industry data in -- in providing those estimates,</p> <p>23 but there's other calculations that I did. So</p> <p>24 you're right in part, but there's a part of my</p> <p>25 report where I discuss some comparisons to the</p>

<p style="text-align: right;">Page 118</p> <p>1 industry.</p> <p>2 Q. Fully understood. I'm just trying to figure out</p> <p>3 where the math comes from to get these very</p> <p>4 specific numbers just in the exhibits.</p> <p>5 A. Correct.</p> <p>6 Q. So the 16 percent; how was that calculated back in</p> <p>7 Exhibit 8.0?</p> <p>8 A. It uses a loss ratio.</p> <p>9 Q. And are we sure we're talking about the right</p> <p>10 thing? Because I see in Exhibit 8 that's a 2018</p> <p>11 figure, and Exhibit 5.0 doesn't have dates on it.</p> <p>12 A. I think we applied the 2018 figures to the overall</p> <p>13 time frame. I think that's kind of a generous</p> <p>14 assumption if my recollection is correct. Because</p> <p>15 there's other years where it's lower.</p> <p>16 Q. So you ...</p> <p>17 A. You know, it could be -- I'd have to check this.</p> <p>18 I think that it ends up being mostly 2018 because</p> <p>19 of the time frame -- or the window of the damages</p> <p>20 period. I think we actually matched it to the</p> <p>21 damages period specifically, and it ends up being</p> <p>22 it's driven by 2018.</p> <p>23 Q. Well, if you look back at Exhibit 6.0.</p> <p>24 A. Okay.</p> <p>25 Q. I see 4.6, 4.7, and 4.3 for 2016, 2017, and 2018.</p>	<p style="text-align: right;">Page 120</p> <p>1 A. And 2018 all I'm saying when I look at the 2018</p> <p>2 number and it matched it's not surprising because</p> <p>3 out of those 24 plus 12 so 36 months 2018 is a</p> <p>4 third of it, and it's the -- one of the larger</p> <p>5 years in terms of gross written premiums. So --</p> <p>6 and it didn't surprise me that the number matched.</p> <p>7 I think it's a combination of all of these,</p> <p>8 and maybe the 17 percent -- the difference between</p> <p>9 the 17 percent and the 16 percent is a rounding</p> <p>10 difference, but it's directionally the same.</p> <p>11 Q. So I see throughout these charges the phrase loss</p> <p>12 ratio, and what is the loss ratio and how is it</p> <p>13 calculated?</p> <p>14 A. Well, I describe that in my report. I described</p> <p>15 that in Section 4.3. I describe how the combined</p> <p>16 ratio is -- combined loss ratio is 84 percent, and</p> <p>17 I discuss the components of that in the preceding</p> <p>18 paragraphs.</p> <p>19 Q. And how did you use -- how did you use the loss</p> <p>20 ratio in developing your opinions?</p> <p>21 A. To determine what sort of costs are required to</p> <p>22 support a business like this.</p> <p>23 Q. And so let's take the loss ratio on Exhibit 5.0.</p> <p>24 It's 56 percent.</p> <p>25 A. That's the before expenses; right? That's the</p>
<p style="text-align: right;">Page 119</p> <p>1 Does that change your thought process?</p> <p>2 A. No.</p> <p>3 Q. No?</p> <p>4 A. I said no.</p> <p>5 Q. So the 2.456 on Exhibit 5.0 represents -- I just</p> <p>6 want to make sure I got this right. That</p> <p>7 represents the underwriting profit assuming a 16</p> <p>8 percent loss ratio; is that right?</p> <p>9 A. The loss ratio is an opposite number, but yeah, 1</p> <p>10 minus the loss ratio.</p> <p>11 Q. Okay, and that's the underwriting profit for all</p> <p>12 of the years --</p> <p>13 A. That are in the data I think, but it's largely</p> <p>14 2018, it's driven by 2018 because that's the</p> <p>15 biggest portion of the window.</p> <p>16 Q. By what metric '2018 is the biggest portion of the</p> <p>17 window by what metric?</p> <p>18 A. Your allegations in this case. It's a function of</p> <p>19 time, right, from the contract expiring from 2016.</p> <p>20 So, like, Exhibit 6 has 2016, 2017, 2018, and</p> <p>21 2019.</p> <p>22 Q. Um-hm.</p> <p>23 A. And that's the period or -- that's covered under</p> <p>24 your allegations; right?</p> <p>25 Q. Correct.</p>	<p style="text-align: right;">Page 121</p> <p>1 loss ratio before expenses?</p> <p>2 Q. Correct.</p> <p>3 A. Okay.</p> <p>4 Q. Were you just -- when you just testified use the</p> <p>5 loss ratio to determine what sort of costs</p> <p>6 required to support the business you were maybe</p> <p>7 referring to the combined ratio?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. Let's move to Exhibit 7.</p> <p>10 A. Okay.</p> <p>11 Q. Actually, 8 while we're in the United States.</p> <p>12 Finish that out. Okay. So starting with Exhibit</p> <p>13 8, at a 10,000 foot level, what am I looking at in</p> <p>14 Exhibit 8?</p> <p>15 A. This is looking at the income statements of the</p> <p>16 businesses that had income statement prepared by</p> <p>17 Federal.</p> <p>18 Q. Is that US or international?</p> <p>19 A. It's both I think. I mean, it's detailed in the</p> <p>20 exhibits that follow as UK entities, Canada, US,</p> <p>21 North America.</p> <p>22 Q. So 8 is a rollup of all the -- all the exhibits</p> <p>23 under 8, 8.1, 8.2?</p> <p>24 A. Yeah.</p> <p>25 Q. Okay. So then let's move on to 8.1. Handing you</p>

<p style="text-align: right;">Page 122</p> <p>1 what has been marked as Exhibit 409 previously in 2 this case, and I see at the third page of 8.1 that 3 your source is FED 1788, which is this Exhibit 4 409. Is that -- is that accurate? 5 A. Yes. 6 Q. And how did you use Exhibit 409 when determining 7 your calculations in Exhibit 8.1? 8 A. I aggregated them in the ways that I described in 9 -- in my -- in the exhibit. I basically took this 10 data and sorted it or re-characterized -- 11 recalculated it to be consistent with the format 12 that I've laid out in these series of exhibits. 13 Q. And the gross written premium figures in Exhibit 14 8.1 did they come from Exhibit 409? 15 A. I think so. It says yes. It's source, Number 1, 16 is on Page 3 of 3. I say it's -- I cite to the 17 same document. 18 Q. Right. The reason I ask is I don't see that 19 little Footnote 1. Oh. It's at the very top. 20 Okay. 21 So for the gross written premiums, we 22 looked at the data in Interrogatory Number 17 23 before lunch. Why did you use gross written 24 premiums from Exhibit 409 and not Interrogatory 25 Number 17?</p>	<p style="text-align: right;">Page 124</p> <p>1 are special queries and things that need to be 2 run, and there's not costs that are allocated or 3 revenues in the ordinary course of business. 4 So what this does is at least says, hey, 5 how do your costs behave for your businesses in 6 the ordinary course, are there reports where you 7 -- that you generate in the ordinary course that 8 might be helpful to understand what your cost 9 structure is, and these types of categorizations 10 in Exhibit 409 relate to that, or they answer that 11 question. 12 Q. Do you also understand that included in Exhibit 13 409 are policies that don't run through the 14 applications that are at issue in this lawsuit? 15 A. That's possible. Again, this is an ordinary 16 course of business report that relates to how the 17 business is actually run, and that's what we have 18 to look at to study costs. 19 Q. Do you know what percentage of the policies 20 recorded in Exhibit 409 did go through the 21 applications that include Blaze Advisor? 22 A. I think you could compare the estimates that are 23 specific to Blaze Advisor to these numbers and 24 derive a percentage as a proxy, to use as a proxy. 25 I don't know that I've done that, but you could do</p>
<p style="text-align: right;">Page 123</p> <p>1 A. Because this is a source that as I'm looking at 2 the businesses that are associated with cost. 3 This data was produced in this case, and it's -- 4 this is more of an ordinary course of business 5 document that shows how costs are allocated to 6 businesses in the ordinary course of business. 7 Q. Exhibit 409 was prepared solely for litigation; 8 isn't that right? 9 A. I'm not certain. I think this actually comes 10 closer to what the company does in the ordinary 11 course of business. It might have been a pull or 12 a query that was made in response to a request 13 that was in connection with this litigation, but 14 this is more of an ordinary course type of report. 15 It comes from the system of record as I understand 16 it. 17 Q. And do you understand that Mr. Harkin testified 18 that included in this data are policies that -- 19 that did not touch Blaze Advisor? 20 A. Yes. So that's what I was trying to say in my 21 prior answer, and that's what I've tried to 22 explain in my report at length is that Blaze 23 Advisor isn't a separate business at all within 24 Federal, and to get -- to respond to your demands 25 for information or requests for information, there</p>	<p style="text-align: right;">Page 125</p> <p>1 that. 2 Q. And the data in Exhibit 409 includes Canada; 3 correct? 4 A. Yes. 5 Q. And it doesn't include gross written premium from 6 writing companies that were Legacy ACE writing 7 companies; correct? 8 A. I'd have to check, but I think all of these are 9 for Chubb from my memory. It's whatever the title 10 is. I don't think ACE was rolled up into this 11 data. 12 Q. Now, the losses and expenses. Let's take the 13 losses first, losses and LAE incurred. How did 14 you calculate in Exhibit 8.1 the losses and LAE 15 incurred? 16 A. This comes from the document is what happened in 17 the ordinary course of business. 18 Q. And so you believe that the losses were 19 appropriate to deduct as a cost in this case? 20 A. For the purposes that I did it, yes. 21 Q. Why is that? 22 A. Because Mr. Zoltowski didn't identify any costs, 23 and he's got a problem with nexus, as you and I 24 have discussed at length and is described 25 throughout my report, and I'm constrained in that</p>

<p style="text-align: right;">Page 126</p> <p>1 regard in that his starting points are a little</p> <p>2 bit unrealistic, but I do think it -- it would be</p> <p>3 compound the error to say that, well, because</p> <p>4 you've got these revenues that are problematic,</p> <p>5 I'm not going to measure costs or there aren't any</p> <p>6 costs.</p> <p>7 So instead, what I say is, well, what's</p> <p>8 kind of the best way to look at costs when you're</p> <p>9 basically accusing the entirety of a business, and</p> <p>10 so I looked at the reporting information that was</p> <p>11 available in this case and I got from the public</p> <p>12 domain to try to estimate what sort of costs would</p> <p>13 be associated with an insurance business, and</p> <p>14 certainly one of the major categories of insurance</p> <p>15 is that you're going to have some losses. You</p> <p>16 write premiums, and then you have losses that</p> <p>17 accrue against the premiums written, and so in</p> <p>18 that way, it's relevant to try to understand how</p> <p>19 those costs behave, and if Mr. Zoltowski --</p> <p>20 Zoltowski is trying to say that there's revenues</p> <p>21 that are generated by Blaze, well, there's going</p> <p>22 to be costs, there's going to be underwriting</p> <p>23 losses.</p> <p>24 That's what I'm trying to estimate there,</p> <p>25 or at least demonstrate, using the best available</p>	<p style="text-align: right;">Page 128</p> <p>1 A. I think generally speaking the directionality is</p> <p>2 what's in the data. I think the losses and LA --</p> <p>3 LAE incurred are 53 to 58 percent of the premiums</p> <p>4 that are written based upon Exhibit 8.1 for Chubb</p> <p>5 specialty and commercial insurance segments in</p> <p>6 North America to use one example.</p> <p>7 Q. My question is how do the costs -- how do the</p> <p>8 losses vary with a change in the gross written</p> <p>9 premium?</p> <p>10 A. If you write a premium, that means you're selling</p> <p>11 insurance, and you have an expected loss</p> <p>12 associated with whatever the premium is that you</p> <p>13 write. That's how -- that's why you have</p> <p>14 underwriters and insurance companies, to try to</p> <p>15 figure out what the odds are that there will be a</p> <p>16 loss against the dollar and revenues that you</p> <p>17 write.</p> <p>18 Q. Could -- some policies, you would agree though,</p> <p>19 have greater losses than other policies; correct?</p> <p>20 A. Yeah. Sure. Every policy is going to be</p> <p>21 different. In actuality, all you have to do --</p> <p>22 all you can do as an insurance company is try to</p> <p>23 estimate what your loss ratio is going to be, and</p> <p>24 it averages out, and that's what you try to</p> <p>25 manage.</p>
<p style="text-align: right;">Page 127</p> <p>1 information.</p> <p>2 Q. Do you know how -- in Exhibit 409, do you know how</p> <p>3 the losses and LAE incurred were calculated in</p> <p>4 Exhibit 409?</p> <p>5 A. Let me see if I describe that in my report. I</p> <p>6 think that this actually comes from actual losses</p> <p>7 and loss estimates that are made in the business</p> <p>8 in the ordinary course of business. It comes from</p> <p>9 the system of record.</p> <p>10 Q. So they are -- they are tracked in a -- I remember</p> <p>11 Mr. Harkin used the words bulk and direct?</p> <p>12 A. Yes.</p> <p>13 Q. Those in your opinion would be direct?</p> <p>14 A. I'd have to review his testimony about bulk and</p> <p>15 direct. I know that there's some timing</p> <p>16 allocations that need to be done. I defer to what</p> <p>17 he said more specifically.</p> <p>18 What's -- what I do remember sitting here</p> <p>19 is it comes from their system of record. It's how</p> <p>20 they manage the business in the ordinary course.</p> <p>21 Q. And with regard to the losses, is there a</p> <p>22 one-to-one correlation with respect to losses</p> <p>23 compared to the gross written premiums such that</p> <p>24 gross written premium goes up a dollar and the</p> <p>25 loss goes up a dollar, or not?</p>	<p style="text-align: right;">Page 129</p> <p>1 Q. And let's move to the expenses incurred on 409.</p> <p>2 Let me ask it a different way. On 8.1, I see a</p> <p>3 line item for expenses. What -- what buckets of</p> <p>4 expenses were included in that line item?</p> <p>5 A. I understand commissions, general administrative,</p> <p>6 and dividends.</p> <p>7 Q. And do you know how Federal tracks and allocates</p> <p>8 the general, and administrative, and the taxes,</p> <p>9 licenses, fees, the TLF expenses?</p> <p>10 A. I think that it tries to -- if my recollection is</p> <p>11 correct, it tries to allocate as much as it can</p> <p>12 directly to the business, and to the extent</p> <p>13 there's any re-allocations that needs to be done,</p> <p>14 those are done on an activity based costing basis.</p> <p>15 Q. What do you mean by activity based costing basis?</p> <p>16 A. The company tries to look and see how to allocate</p> <p>17 costs so it matches how the business is run, and</p> <p>18 my recollection from speaking with people at Fed</p> <p>19 is that most of the allocations when they are</p> <p>20 done, when they don't have the amount to put</p> <p>21 directly into the income statements for those</p> <p>22 businesses, are allocated based upon written</p> <p>23 premiums percentage.</p> <p>24 Q. And do you know how they were -- those expenses</p> <p>25 were allocated on Exhibit 409?</p>

<p style="text-align: right;">Page 130</p> <p>1 A. Like I just described.</p> <p>2 Q. So for those expenses that are allocated on a</p> <p>3 gross written premium basis, do you have any</p> <p>4 information about whether or how those expenses</p> <p>5 vary with a change in gross written premium?</p> <p>6 A. They do. By definition, that's how they are being</p> <p>7 allocated, and they are allocated on an</p> <p>8 activity-based costing system, and that's how they</p> <p>9 behave is a function of gross written premiums.</p> <p>10 Q. That's how the allocation behaves; correct?</p> <p>11 A. Well, the idea is that the allocations are</p> <p>12 supposed to match the business behavior.</p> <p>13 Q. And what evidence do we have in this case that the</p> <p>14 allocations do match the business behavior of</p> <p>15 Federal?</p> <p>16 A. Well, I'm relying upon what Federal witnesses told</p> <p>17 me and what they told you during their</p> <p>18 depositions. So we have that as evidence, and I</p> <p>19 think also we have fundamental analysis of the</p> <p>20 business and my research. I think it's reasonable</p> <p>21 to expect that a company that is writing insurance</p> <p>22 and collects premiums for writing insurance is</p> <p>23 going to manage its business so that if the</p> <p>24 premiums go up or down that they put the</p> <p>25 appropriate infrastructure in place to support</p>	<p style="text-align: right;">Page 132</p> <p>1 ordinary course what does match and is doable by</p> <p>2 Federal to provide a proxy or an estimate for the</p> <p>3 applicable costs. That's what I say basically in</p> <p>4 Footnote Number 1.</p> <p>5 Q. So 7.1 is a comparison of your data in 8.2</p> <p>6 compared to Mr. Zoltowski; is that a proper</p> <p>7 description?</p> <p>8 A. No.</p> <p>9 Q. Looking at 8.2, I see the -- the gross written</p> <p>10 premium in 2013 starts with 27, and then when I</p> <p>11 look back to 7.1, I see that it's 19. Why are</p> <p>12 those two numbers different?</p> <p>13 A. I think I'm using the numbers that Mr. Zoltowski</p> <p>14 estimated. I think in 7.1 I'm taking Zoltowski's</p> <p>15 -- Mr. Zoltowski's estimates, and then in 8.2, I'm</p> <p>16 taking a look at ordinary course costs and</p> <p>17 financial reporting and how it estimates those</p> <p>18 costs, and then I go back to 7.1 and I say, well,</p> <p>19 you know, we got to put some costs against the</p> <p>20 revenues. It's not like this revenue stream, even</p> <p>21 as flawed as it is, wouldn't have any costs</p> <p>22 associated with it. So I take what was done in</p> <p>23 the ordinary course and then allocate it.</p> <p>24 Q. Okay. So moving to 8.2, the source for your data</p> <p>25 is solely 17884. So how did you -- did you use</p>
<p style="text-align: right;">Page 131</p> <p>1 managing that.</p> <p>2 Q. Do you disagree with Mr. Harkin's testimony</p> <p>3 regarding Exhibit 409?</p> <p>4 A. No. I considered what he said.</p> <p>5 Q. Let's move to Exhibit 8.2.</p> <p>6 A. Okay.</p> <p>7 Q. 8.2 focuses on Australia; correct?</p> <p>8 A. Correct.</p> <p>9 Q. And for Australia, what was your support for your</p> <p>10 data regarding the gross written premium?</p> <p>11 A. I think that comes from FED 017884_001.</p> <p>12 Q. I'm handing you that document that was previously</p> <p>13 marked as Exhibit 416, and I apologize, this is so</p> <p>14 small.</p> <p>15 A. I don't think you have to apologize.</p> <p>16 Q. My copy is a tiny bit bigger.</p> <p>17 A. Oh. Okay.</p> <p>18 Q. Not by much. Okay. So looking at 8.2, how does</p> <p>19 Exhibit 8.2 relate to Exhibit 7.1?</p> <p>20 A. 7.1? Oh. So what I'm doing I explain in Footnote</p> <p>21 Number 1 is that Mr. Zoltowski has identified some</p> <p>22 gross written premiums, and there's not, as we</p> <p>23 discussed, an ordinary course of business report</p> <p>24 that has costs allocated according to what he's</p> <p>25 done, and so I use what is prepared in the</p>	<p style="text-align: right;">Page 133</p> <p>1 the same methodology regarding the figures</p> <p>2 calculated for losses incurred that we talked</p> <p>3 about with regard to the US data?</p> <p>4 A. Yes.</p> <p>5 Q. And the -- the same answers for expenses; used the</p> <p>6 same methodology to calculate the expenses?</p> <p>7 A. True.</p> <p>8 Q. And are the -- are the -- do you have any quarrel</p> <p>9 with Mr. Harkin's testimony regarding FED 17884?</p> <p>10 A. What are you talking about? What testimony?</p> <p>11 Q. He -- he testified about 17884 and what -- what</p> <p>12 was included under the losses and the expenses and</p> <p>13 how to read the documents. So I'm just wondering</p> <p>14 in I can look to his testimony to understand how</p> <p>15 17884 can be interpreted, or if -- if you</p> <p>16 disagreed with any of his testimony and thought he</p> <p>17 was wrong?</p> <p>18 MR. FLEMING: So are you referring to,</p> <p>19 like, a paragraph or a number of pages in Harkin's</p> <p>20 testimony?</p> <p>21 MS. KLIEBENSTEIN: No.</p> <p>22 THE WITNESS: Is that a question for me?</p> <p>23 BY MS. KLIEBENSTEIN:</p> <p>24 Q. Yes.</p> <p>25 A. I think that whatever Mr. Harkin said he said, and</p>

Page 134

1 I would accept. I don't recall anything that I
 2 disagreed with, but I do think that whatever he
 3 said or did needs to be considered in its proper
 4 context, and so I think that's the best I can do
 5 without you being more specific.
 6 Q. For your gross written premium calculations in
 7 Exhibit 8.2, you did not use Federal's
 8 interrogatory response relating to Australia and
 9 the gross written premiums that touch Blaze
 10 Advisor in Australia; is that right?
 11 A. I think what I'm doing in 8.2 is trying to
 12 understand costs, and so I'm taking ordinary
 13 course information, and it might match what's in
 14 that interrogatory response, but that would be
 15 sort of coincidental. What I'm really focused on
 16 in that series of exhibits is costs, cost
 17 structure.
 18 Q. Mr. Harkin testified that the net earned premium
 19 and the net written premium were derived. Do you
 20 recall that testimony?
 21 A. I wish I had that type of memory. I don't, but
 22 that's not surprising to me.
 23 Q. And when I asked him what -- what does derived
 24 mean, he said, "There were assumptions applied to
 25 the written premium poll to approximate what would

Page 135

1 have been in the earned," -- "the net earned
 2 premium associated with these policies haven't
 3 been able to identify underwriting income at that
 4 level."
 5 Did you take that into account when you
 6 used FED 17884 in your calculations in Exhibit
 7 8.2?
 8 A. Yes. I was aware of that.
 9 Q. And were you -- were you concerned that those
 10 figures were derived?
 11 A. No.
 12 Q. And why not?
 13 A. Because that's normal. That's how businesses
 14 operate.
 15 Q. And for the expenses reported in 17884, did you
 16 deduct all the losses and expenses are reflected
 17 in that document in your Exhibit 8.2?
 18 A. I think the numbers should match. I think so. If
 19 that's what you mean.
 20 Q. So 7.2 and 8.3, moving on to Europe.
 21 A. That sounds exciting. Okay.
 22 Q. Can you explain to me the relationship between
 23 Exhibit 7.2 and 8.3?
 24 A. It's the same. 8.3 is -- oh, and this is UK;
 25 right? 7.2 -- 7.2 is Europe and 8.3 is UK, and so

Page 136

1 we're using that UK business, which I think
 2 includes Europe, the European businesses, at least
 3 for a time being, to estimate the costs that would
 4 apply under what you've accused as being
 5 applicable to Europe.
 6 Q. So confirming that I understand what you just
 7 said, you used costing data from the UK to -- and
 8 then applied that to application -- or gross
 9 written premiums in both the UK and Europe?
 10 A. Used the best available estimate, and I'd have to
 11 check if this UK business included Europe in the
 12 income statement.
 13 So in 7.2, we have information about what
 14 you've accused. There's a product that is in
 15 Europe, and there's two products that are in the
 16 UK, and then I'm trying to estimate what applies
 17 to those revenues in terms of costs, and so I use
 18 the ordinary course report that was -- that's in
 19 the 8.3.
 20 Q. I'm handing you what has been marked as Exhibit
 21 413, which is FED 17885.
 22 A. Okay.
 23 Q. Is this the costing data you were just referring
 24 to?
 25 A. It appears to be.

Page 137

1 Q. And I see down in --
 2 A. Yes.
 3 Q. -- Footnote 4, the report states, "I was not
 4 provided with business segment financials for the
 5 years 2013 to 2015. As such, I have used the
 6 two-year average ratio from 2016 to 2017."
 7 Why did you not have business segment
 8 financials for 2013 to 2015?
 9 A. I don't know.
 10 Q. Did you ask Federal for that data?
 11 A. Yes.
 12 Q. And you didn't -- didn't get any?
 13 A. Correct.
 14 Q. In preparing -- were you told why you couldn't
 15 have any?
 16 A. Probably.
 17 Q. In Exhibit 7.2, can you walk me through how you
 18 calculated the gross written premiums?
 19 A. It's the same as the others where I had what Mr.
 20 Zoltowski identified, and then we went through the
 21 analysis that I discussed earlier, and then we
 22 wanted to estimate or I wanted to estimate what
 23 the costs are that would apply using ordinary
 24 course of business reporting is what I determined
 25 would be the best way to estimate what those costs

<p style="text-align: right;">Page 138</p> <p>1 are, and that's what I used in the 8 series</p> <p>2 exhibits to look at the business and how its</p> <p>3 managed in the ordinary course and how costs</p> <p>4 behaved, and then I went back and allocated that</p> <p>5 I'm using the percentages in Exhibit 7.2.</p> <p>6 Q. The gross written premiums in Exhibit 7.2 are</p> <p>7 based on interrogatory response; correct?</p> <p>8 A. Well, Mr. Zoltowski's is, is that. We talked</p> <p>9 about the issues with that.</p> <p>10 Q. Yes, but did you -- for your calculations, did you</p> <p>11 use the interrogatory responses or Exhibit 413?</p> <p>12 A. Well, for the gross written premiums, I used that</p> <p>13 other exhibit, the document, the native file. I</p> <p>14 got rid of the double counting stuff; right? We</p> <p>15 talked about that earlier for the revenue stream,</p> <p>16 and then for costs that applied, then I used this</p> <p>17 413.</p> <p>18 Q. For EU and UK data?</p> <p>19 A. Well, maybe I'm mistaken. Oh. I do. I have a</p> <p>20 Footnote Number 3. Fair. Fair question. I did</p> <p>21 use interrogatory responses for this. That's what</p> <p>22 I used to do to deal with the double counting</p> <p>23 issue. Fair enough. That's a good question.</p> <p>24 Q. So how did the -- using the interrogatory</p> <p>25 responses deal with the double counting issue?</p>	<p style="text-align: right;">Page 140</p> <p>1 just table that and keep going.</p> <p>2 A. Okay.</p> <p>3 Q. So in 8.3, walk me through how you used Exhibit</p> <p>4 413 to calculate the losses and expenses in</p> <p>5 Exhibit 8.3.</p> <p>6 A. Well, I utilized the document that was produced by</p> <p>7 Federal to categorize these costs and calculate</p> <p>8 these loss ratios or expense ratios. How are we</p> <p>9 doing with time? I actually could use a break to</p> <p>10 use the restroom.</p> <p>11 Q. 2:30.</p> <p>12 A. I know it hasn't been that long but --</p> <p>13 Q. That's okay. We can take a break.</p> <p>14 A. Okay. Thank you.</p> <p>15 THE VIDEOGRAPHER: We are going off the</p> <p>16 record. The time now is 2:37 p.m.</p> <p>17 (Whereupon a short break was taken from</p> <p>18 2:37 p.m. to 2:49 p.m.)</p> <p>19 (Whereupon material was marked for</p> <p>20 identification as Exhibit 526.)</p> <p>21 THE VIDEOGRAPHER: We are back on the</p> <p>22 record. This marks the beginning of Media 5 in</p> <p>23 the deposition of Chris Bakewell. The time now is</p> <p>24 2:50 p.m.</p> <p>25 BY MS. KLIEBENSTEIN:</p>
<p style="text-align: right;">Page 139</p> <p>1 A. Well, it didn't. There is a double counting issue</p> <p>2 in there, and to deal with it, I used these</p> <p>3 ordinary course of business reports. It's not</p> <p>4 that -- well, that's right. That's what I did.</p> <p>5 I'll leave it there.</p> <p>6 Q. Well, but the double counting issue only dealt</p> <p>7 with CUW -- CUW and CSI Express, correct, and</p> <p>8 Premium Booking?</p> <p>9 A. I'd have to look and see what Mr. Zoltowski did on</p> <p>10 Schedule 11.1 of his report. Do you have that?</p> <p>11 That's what I cite to in my footnote for Exhibit</p> <p>12 7.2.</p> <p>13 Q. I'm not asking about Mr. Zoltowski's numbers. I'm</p> <p>14 asking about the numbers that your team calculated</p> <p>15 below that, and so my understanding CSI Express,</p> <p>16 CUW, and Premium Booking are US applications, and</p> <p>17 in the EU, we have Adapt, EZER -- Adapt and EZER.</p> <p>18 So is it your belief that the double counting</p> <p>19 issue extends to Adapt and EZER?</p> <p>20 A. I'll have to see what I cite in Exhibit 7.2 to Mr.</p> <p>21 Zoltowski's report, Schedule 11.1. So if I could</p> <p>22 see that, I think that would refresh my memory as</p> <p>23 to what is causing this discrepancy I'm citing to</p> <p>24 that for that reason.</p> <p>25 Q. Okay. I'll have something in a minute. We'll</p>	<p style="text-align: right;">Page 141</p> <p>1 Q. Mr. Bakewell, I'd like to turn back to Exhibit 7.2</p> <p>2 and talk about why you used the interrogatory</p> <p>3 responses to generate the gross written premium in</p> <p>4 7.2.</p> <p>5 You asked for Mr. Bakewell's report so you</p> <p>6 could see Schedule 11.1 --</p> <p>7 A. You meant to say Mr. Zoltowski's report. You said</p> <p>8 Mr. Bakewell's --</p> <p>9 Q. I apologize.</p> <p>10 A. That's all right. Okay. I know where you are,</p> <p>11 but I don't know what your question is.</p> <p>12 Q. My question was: Why did you use the</p> <p>13 interrogatory responses to calculate the gross</p> <p>14 written premium amounts in Exhibit 7.2?</p> <p>15 A. Oh. You mean for 2013 through 2015? So what I</p> <p>16 wrote at the very last sentence is, "I was not</p> <p>17 provided with business segment financials for the</p> <p>18 years 2013 to 2015. As such, I've used gross</p> <p>19 written premiums from interrogatory responses for</p> <p>20 those years." Is that what you're referring to?</p> <p>21 Q. No. The first sentence in Footnote 3 of 7.2 says,</p> <p>22 "I have used the gross written premiums from the</p> <p>23 interrogatory responses for the years 2013 to</p> <p>24 2019."</p> <p>25 A. So I go on and I go through 2013, '14, '15, '16,</p>

<p style="text-align: right;">Page 142</p> <p>1 '17, and '18. So for every year, I have an 2 explanation as to why. I do it in reverse order. 3 I discuss 2016 through 2018 first, and I say that 4 I used the information for the interrogatory 5 responses, from the interrogatory responses 6 because the business segment financials are 7 greater than or similar to the gross written 8 premiums in the interrogatory responses. So 9 that's why I used it for those years, and then I 10 didn't have information from 2013 through 2015, 11 and so what I used for those years was the gross 12 written premiums from the interrogatory responses. 13 That's why I used that information kind of 14 overall. 15 Q. So for 2016 through 2018, why didn't you use the 16 business segment financials for the gross written 17 premium dollars? 18 A. Since the gross written premiums from the business 19 segment financials are greater than or similar to 20 the gross written premiums in the interrogatory 21 responses. Just as I wrote. 22 Q. And I'm wondering why -- why that criteria -- why 23 that criteria stuck out in your mind. The -- 24 A. Didn't stick out. 25 Q. Oh.</p>	<p style="text-align: right;">Page 144</p> <p>1 assumptions so that if you disagreed with it or 2 Mr. Zoltowski disagreed with it he could just make 3 changes to it. 4 Q. Did you -- 5 A. That's what was in my mind. 6 Q. Did you ask for business segment financials for 7 the years 2013 to 2015? 8 A. Yes. 9 Q. And did you receive them? 10 A. No. 11 Q. So let's move to 8.3. How did you calculate the 12 loss figures in 8.3? 13 A. Came from the document I think that I cited. It's 14 from the document that I cited to in Exhibit 413. 15 Q. So you adopted the figures of the losses and 16 expenses in Exhibit 413? 17 A. I think so. Yes. 18 Q. And what is your understanding of the expenses 19 that are reported in Exhibit 413? Meaning, how 20 are they -- how are they tracked and allocated? 21 A. In the ordinary course of business, this is -- 22 this reflects ordinary course of business 23 information, and I think it's the same as what we 24 discussed for the other businesses where Federal 25 will allocate the costs that it can and where it</p>
<p style="text-align: right;">Page 143</p> <p>1 A. This isn't like the type of work where that's 2 going to stick out in my mind, but I can tell you 3 what it -- what happened or what I was thinking 4 just sort of in a plain sense. 5 Q. Please do. 6 A. The reason why is because what we're trying to get 7 -- at least whether I understood you were trying 8 to get at in your allegations is some sort of 9 measure that relates to Blaze Advisor, and Federal 10 has consistently said, hey, look, we don't keep 11 that information in the ordinary course of 12 business, and it doesn't generate revenues, and 13 there's all kind of discussions back and forth 14 about that over a protracted period of time, and 15 then what Fed did is -- Federal did is produced 16 information that it believes was the most 17 responsive to your request, albeit it's 18 overinclusive. It related to its aspect of its 19 business that uses Blaze Advisor, and it was a 20 subset of the information that applied to the 21 business overall, albeit very close to the 22 business overall, and so I used that information 23 because it seemed to go in a direction of what 24 your allegations are in this case, and on top of 25 that, what I also did is I disclosed my</p>	<p style="text-align: right;">Page 145</p> <p>1 can't, and it needs to -- or I said allocate the 2 costs where it can. I meant expense the costs to 3 the business where it can, and then where it needs 4 to allocate, it uses activity-based costing to do 5 that, and the primary means of allocation is by 6 written premium. That's my recollection as I sit 7 here right now. 8 Q. Let's move to Canada in 8.4. 9 A. Okay. 10 Q. I'm handing you what's been marked as Exhibit 418. 11 For your gross written premiums in Exhibit 8.4, 12 did you use the figures from Exhibit 418? 13 A. I did. 14 Q. And why did you use 418 instead of the 15 interrogatory responses? 16 A. For the same reasons that I discussed with the 17 others is that this has details about how the 18 business is managed in the ordinary course, and 19 how costs behave. 20 Q. And we don't know in Exhibit 418 what percentage 21 of the gross written premium are from policies 22 that touch applications that include Blaze 23 Advisor; isn't that right? 24 A. It's sort of right. I mean, this is a proxy for 25 trying to estimate what the costs are. We don't</p>

<p style="text-align: right;">Page 146</p> <p>1 have the Blaze Advisor related information because</p> <p>2 it's not kept in the ordinary course of business.</p> <p>3 So this is the best estimate that I can find, as I</p> <p>4 discussed earlier, and as I described in my</p> <p>5 report.</p> <p>6 Q. Exhibit 418 was created for this litigation, but I</p> <p>7 understand you believe that Exhibit 418 includes</p> <p>8 -- Exhibit 418 is kept in the ordinary course of</p> <p>9 business; is that right?</p> <p>10 A. The data is. I think this particular printout or</p> <p>11 query might have been done for this litigation,</p> <p>12 but generally speaking, it's information that is</p> <p>13 kept in the ordinary course of business, and it</p> <p>14 uses the type of reporting that is done in the</p> <p>15 ordinary course of business.</p> <p>16 Q. And when you -- just so I make sure we're on the</p> <p>17 same page, when you say kept in the ordinary</p> <p>18 course of business, what do you mean by that?</p> <p>19 A. It comes out of the system of record, and it was a</p> <p>20 query made of that.</p> <p>21 Q. And it's -- you mentioned it's the type of report</p> <p>22 that is in the ordinary course of business. What</p> <p>23 do you mean by that?</p> <p>24 A. Looking at loss ratios and expense ratios is the</p> <p>25 way a business is managed.</p>	<p style="text-align: right;">Page 148</p> <p>1 complete and unnecessary audit. I inquired about</p> <p>2 it to check its reasonableness.</p> <p>3 So I think that's a way that is more</p> <p>4 accurate to describe what I did as opposed to</p> <p>5 adopting without modification. Like you said.</p> <p>6 Q. Understanding the work that you did, I'm just</p> <p>7 trying to confirm the numbers match.</p> <p>8 A. They should match.</p> <p>9 Q. Okay, and why did you not use -- strike that. I</p> <p>10 already asked that. Look at Exhibit 10 of your</p> <p>11 report.</p> <p>12 A. Okay.</p> <p>13 Q. Can you tell me what information is shown in</p> <p>14 Exhibit 10?</p> <p>15 A. This is a -- these are loss ratios, and expense</p> <p>16 ratios, and combined ratios from other companies</p> <p>17 in the space.</p> <p>18 Q. And how did you select the other companies that</p> <p>19 are on this chart?</p> <p>20 A. I think these are often cited in the materials</p> <p>21 that I've seen as being the peers of Chubb.</p> <p>22 Q. So this is a list that you determined to be the</p> <p>23 peers of Chubb?</p> <p>24 A. I don't know that I determined it or if it's sort</p> <p>25 of a consensus view. I might have described this</p>
<p style="text-align: right;">Page 147</p> <p>1 Q. Did you ask Federal for more detailed information</p> <p>2 regarding its losses and expenses that are</p> <p>3 reflected in the exhibits we've gone through</p> <p>4 today?</p> <p>5 A. I think I asked for the most detailed information</p> <p>6 that would be reasonable to provide and that was</p> <p>7 kept in the ordinary course and wouldn't be overly</p> <p>8 burdensome.</p> <p>9 Of course I always want more detail, and I</p> <p>10 have a thirst for information, but I also I think</p> <p>11 have a responsibility to the process and to</p> <p>12 everyone to make sure that my requests are</p> <p>13 realistic, and that's what I meant by not being</p> <p>14 overly burdensome.</p> <p>15 So this seemed to me to be a good balance.</p> <p>16 It was sufficient for my work, and I was</p> <p>17 satisfied.</p> <p>18 Q. And for losses and expenses reflected in Exhibit</p> <p>19 8.4, did you -- did you adopt without modification</p> <p>20 the losses and expenses that are reflected in</p> <p>21 Exhibit 418?</p> <p>22 A. Well, I had to modify this in terms of, like,</p> <p>23 performing calculations and synthesizing this</p> <p>24 information. I assumed that it's correct, and it</p> <p>25 seems correct to me without, like, doing a</p>	<p style="text-align: right;">Page 149</p> <p>1 in my report.</p> <p>2 These seem to be the companies that were</p> <p>3 consistently identified as being its peers. Might</p> <p>4 be somewhere where I describe this in my report.</p> <p>5 It's getting late in the day. I thought I</p> <p>6 mentioned it, but I'm not the only one who has</p> <p>7 taken this view. There's other analysts who</p> <p>8 identified these same companies.</p> <p>9 Q. And what is the purpose of Exhibit 10 as it</p> <p>10 relates to your overall opinions?</p> <p>11 A. It's just to check the reasonableness of the</p> <p>12 information that was provided by Chubb to make</p> <p>13 sure that it was consistent with peers and the</p> <p>14 industry I think to -- it's also to help provide</p> <p>15 context for Chubb's information, and to show that</p> <p>16 this is how the businesses in this space are all</p> <p>17 managed, they all use the same sort of view of how</p> <p>18 costs behave, and categorization of costs</p> <p>19 according to loss and expense ratios.</p> <p>20 Q. Is it your opinion that FICO's damages for breach</p> <p>21 of contract should be determined by analyzing</p> <p>22 hypothetical negotiation between FICO and the</p> <p>23 defendants?</p> <p>24 A. Thought that was strange when I read Mr.</p> <p>25 Zoltowski's report that I accused me of doing</p>

<p style="text-align: right;">Page 150</p> <p>1 that. I thought that was unfounded on his part, 2 and I think that he also mischaracterized what a 3 hypothetical negotiation is supposed to be about 4 and reflected a misunderstanding of it, and I say 5 that because, even if I did use a hypothetical 6 negotiation, I'm not certain that that would be 7 wrong to do. 8 I'm not saying that I did, but the 9 hypothetical negotiation idea relates to a 10 valuation principle of fair market value, and the 11 idea is to go back at whatever the date of the 12 wrongdoing was and figure out what reasonable 13 parties would have negotiated, and while that's 14 got a special term, and in the patent world, that 15 same concept applies outside litigation to valuing 16 really anything tangible or intangible as of a 17 certain date. It's the definition of fair market 18 value is the price that would change hands between 19 willing and reasonable parties each with access to 20 the same information or reasonable knowledge of 21 facts at a given point in time under no compulsion 22 to buy or sell, and that's almost the same 23 standard that's applied in a licensing sense in a 24 hypothetical negotiation. 25 So to bring this all full circle to wrap up</p>	<p style="text-align: right;">Page 152</p> <p>1 damages industry perspective. 2 If you're -- you're on a case where you're 3 analyzing a hypothetical negotiation. What 4 mindset do you give each of the parties? 5 MR. FLEMING: Objection. Vague. 6 BY MS. KLIEBENSTEIN: 7 Q. Does that make sense? 8 A. Let me respond, and we'll see if it's helpful. 9 I'm a financial analyst and a valuation 10 expert, and to me, it's about performing a 11 financial analysis and figuring out what the 12 intrinsic value is, another thing that we can talk 13 about that if you want, but I'm interested in the 14 fundamental and intrinsic value of whatever it is 15 I'm valuing, and I want to consider what that is 16 and in the marketplace and using the toolkit that 17 I described for you earlier, and I want to analyze 18 it and study it, and I'm assuming that anybody 19 else, including the parties to the hypothetical 20 negotiation want to do the same thing, and so it's 21 not about, like, mindsets or that type of thing. 22 It's about figuring out what this stuff is worth 23 and what would be fair. It's about fair market 24 value. 25 That's the way I approach my analysis in</p>
<p style="text-align: right;">Page 151</p> <p>1 my answer, I didn't say it was a hypothetical 2 negotiation, but even if I did, I don't think 3 that's a problem. 4 Q. In that hypothetical -- I understand your answer. 5 I just want to understand this hypothetical 6 negotiation concept fully. 7 In a hypothetical negotiation in this case, 8 how do you -- how do you -- how do you set the 9 parties' mindsets? And that's a really broad 10 question, but it boils down to this: Does -- do 11 you presume that Federal -- Federal has the 12 mindset that it -- it has liability or rather that 13 the two parties are just coming to a table to 14 negotiate a new deal at -- at an arm's length 15 transaction? 16 MR. FLEMING: Object. Multiple questions. 17 Misstates his testimony. 18 THE WITNESS: Are you asking me if I 19 assumed any of those things, or is that a choice, 20 like a checklist? Do I get to choose from the 21 menu like I'm going to dinner? I don't understand 22 your question. 23 BY MS. KLIEBENSTEIN: 24 Q. Sure, and I -- I'm trying to understand this from 25 your valuation principles and from an industry --</p>	<p style="text-align: right;">Page 153</p> <p>1 the patent world and everywhere else, and it's not 2 about trying to figure out what's in the parties' 3 mindsets, and what I -- it's about figuring out 4 what's right, fundamentally and intrinsically, and 5 I have a real problem with what Mr. Zoltowski did 6 here and what he wrote in his reply report because 7 he's violating the principles that he should be 8 complying with, and where I'm saying that there's 9 a big problem is that he's taking this view that 10 he can accept what his client says they want and 11 not consider what the market is like whatsoever. 12 He's taking list prices, and disregarding 13 discounts, and that just violates the spirit of 14 what you're supposed to do if you're claiming to 15 do a valuation. 16 So I hope that's responsive and helps move 17 things along. 18 Q. So your focus when you come to a project like this 19 is not -- is focused on the -- the asset that's at 20 issue, and not -- 21 A. Or the claim. 22 Q. The claim, and not how the parties feel about it? 23 A. Yeah. I think it's our job to take the emotion 24 out of it and try to figure out what's right. 25 Q. So when you were -- when you were developing your</p>

<p style="text-align: right;">Page 154</p> <p>1 opinions, you didn't -- you didn't presume that</p> <p>2 FICO was required to license Blaze Advisor to</p> <p>3 Federal?</p> <p>4 A. I did. I assumed that there was some sort of</p> <p>5 breach of a license or copyright infringement that</p> <p>6 occurred and there needs to be payment</p> <p>7 commensurate with that liability.</p> <p>8 Q. So did you approach the project with the</p> <p>9 assumption that -- did you approach the project</p> <p>10 with -- let me ask it a different way.</p> <p>11 Did you take into account at all whether or</p> <p>12 not FICO was entitled to withhold the license for</p> <p>13 Blaze Advisor?</p> <p>14 A. I don't know what you mean by that.</p> <p>15 Q. You know what? Strike that. I think you answered</p> <p>16 it.</p> <p>17 So in your report, I -- I take your</p> <p>18 position to be that Mr. Zoltowski should have</p> <p>19 placed more -- your criticism of Mr. Zoltowski is</p> <p>20 that he didn't consider FICO's other licenses with</p> <p>21 its licensees; correct?</p> <p>22 A. Well, I don't think he adequately studied the</p> <p>23 backdrop or the context. I wouldn't limit it to</p> <p>24 that.</p> <p>25 Q. And do you feel that you undertook a study of</p>	<p style="text-align: right;">Page 156</p> <p>1 you know, I don't want to use your product anymore</p> <p>2 and I've got other options here, and they work</p> <p>3 something out, and it's not a situation like I've</p> <p>4 seen where there's no other way to do things,</p> <p>5 there's no alternatives, where there's no</p> <p>6 commoditization, and it's truly proprietary in the</p> <p>7 sense that you can only use one company's products</p> <p>8 or you're going to totally lose out.</p> <p>9 There's different ways to accomplish</p> <p>10 basically the same objective, and that's reflected</p> <p>11 in -- in the data that I've seen and the case</p> <p>12 studies that I've provided those examples from</p> <p>13 Oracle and from Dell, and also I would say that</p> <p>14 it's not -- those are also instances where there</p> <p>15 were companies that combined their businesses</p> <p>16 together, and FICO's reaction to that was to</p> <p>17 dispute the scope of the license. So that kind of</p> <p>18 helped me I think understand overall the</p> <p>19 circumstances of what's going on here.</p> <p>20 Q. Did you calculate how much Mr. Zoltowski's damages</p> <p>21 numbers should be reduced in view of these other</p> <p>22 agreements with third parties?</p> <p>23 A. Yes. I think you can derive that from my -- from</p> <p>24 my calculations. Not specifically from these.</p> <p>25 They provide context, but they show that Mr.</p>
<p style="text-align: right;">Page 155</p> <p>1 those other license agreements?</p> <p>2 A. I studied the context and the background I think</p> <p>3 at length.</p> <p>4 Q. And what was your conclusion as to the role those</p> <p>5 agreements play in this case?</p> <p>6 MR. FLEMING: Objection. Vague.</p> <p>7 THE WITNESS: I don't know what those</p> <p>8 agreements are that you're talking about.</p> <p>9 BY MS. KLIEBENSTEIN:</p> <p>10 Q. They are identified --</p> <p>11 A. Which ones?</p> <p>12 Q. They are identified in Exhibit 12. So the</p> <p>13 agreements identified in Exhibit 12 what was --</p> <p>14 what was your ultimate opinion stemming from your</p> <p>15 review of those agreements?</p> <p>16 A. Well, they all provided context. They helped me</p> <p>17 understand the industry a little bit better and</p> <p>18 FICO's licensing practices.</p> <p>19 I think that I used two examples from these</p> <p>20 to provide some context and support the</p> <p>21 observation that I had that the prices that people</p> <p>22 are willing to pay are a function of the fact that</p> <p>23 there's alternatives that are available.</p> <p>24 Both Dell and Oracle are instructive in</p> <p>25 that regard that there's companies that say, hey,</p>	<p style="text-align: right;">Page 157</p> <p>1 Zoltowski's claim that FICO could just license at</p> <p>2 100 percent of whatever is in its price list</p> <p>3 without some give and take is not justifiable.</p> <p>4 Q. Can you point me to in your report where you</p> <p>5 calculate a number as to how much Mr. Zoltowski's</p> <p>6 damages number should be reduced in view of these</p> <p>7 other agreements with third parties?</p> <p>8 A. I can give you a lot of examples so I'll just give</p> <p>9 you a couple. Let's start with Exhibit 1 where I</p> <p>10 illustrate that Mr. Zoltowski doesn't focus in on</p> <p>11 where the applications are actually used.</p> <p>12 I think we saw some instances from Dell and</p> <p>13 Oracle where the parties agreed to focus in on,</p> <p>14 hey, where would you have to use our software, and</p> <p>15 I think that's instructive for making that</p> <p>16 assumption.</p> <p>17 I think that Mr. Zoltowski's assumptions</p> <p>18 regarding maintenance are unreasonable. I make</p> <p>19 adjustments in the four series of exhibits for</p> <p>20 that. I think that I discuss other issues that</p> <p>21 are in part informed by Dell and Oracle is in 35</p> <p>22 and 36. I think both Dell and Oracle said, hey,</p> <p>23 we've got other options here, and our business</p> <p>24 isn't benefited in the way that you claim. I</p> <p>25 think Oracle even said we're not used to paying</p>

[illegible]

<p style="text-align: right;">Page 166</p> <p>1 A. Well, there's calculations that I've seen in the 2 negotiations, and [REDACTED] 3 [REDACTED] 4 [REDACTED]. It's trying to 5 say that you should pay more if you're bigger. 6 That's -- that's what I understand those 7 documents are trying to do, and those documents 8 can -- and the interactions, those things speak 9 for themselves. So if you have specific 10 questions, I'll be glad to answer them. 11 Q. So the 2006 negotiations you also addressed the 12 2006 negotiations in your report; correct? 13 A. Yes. 14 Q. And do you see the 2006 negotiations as having a 15 bearing on -- on all of the different damages 16 claims? 17 A. What do you mean having a bearing? 18 Q. Are relevant to the determination of the damages 19 for breach of contract; actual damages and 20 copyright disgorgement? 21 A. I think they are useful for context. 22 Q. How are they useful for context for copyright 23 disgorgement? 24 A. Because they help describe what the copyrights 25 actually might be, and how they might create value</p>	<p style="text-align: right;">Page 168</p> <p>1 and copyright infringement? 2 MR. FLEMING: Objection. Multiple 3 questions. Calls for speculation. 4 THE WITNESS: I think I'd have to see those 5 documents to know a little bit more about your 6 question in the context of your question. 7 BY MS. KLIEBENSTEIN: 8 Q. In 2016, do you know -- do you have an opinion 9 about Federal's mindset during those 2016 10 negotiations? 11 MR. FLEMING: Objection. Vague. 12 THE WITNESS: I'm not offering an opinion 13 about somebody's mindset. I'm a financial analyst 14 and valuation expert. I'm interested in 15 performing a financial analysis. 16 We talked about that earlier where I think 17 this phrase hypothetical negotiation can sometimes 18 be a little bit of a misnomer, and the job of an 19 expert, damages expert is to perform a financial 20 analysis. So I refer back to that part of my 21 testimony. 22 BY MS. KLIEBENSTEIN: 23 Q. But the discussions in 2016 Federal you would 24 agree did not believe it was liable for breach of 25 contract and copyright infringement?</p>
<p style="text-align: right;">Page 167</p> <p>1 for the business, and so they relate to the issue 2 in nexus. 3 Q. Are you referring to the dollar amounts floated 4 back and forth in the 2016 negotiations? 5 A. I think I'm more referring to the nature of the 6 discussions than I am the dollar amounts, but I 7 think the dollar amounts help provide context too. 8 The parties were focused in and around numbers 9 that were not anywhere near what Mr. Zoltowski is 10 holding out as being relevant. 11 Q. In 2016, do you have an opinion one way or the 12 other if Federal had been told it was in breach of 13 the license agreement would Federal have responded 14 to the different offers from FICO in the same way? 15 MR. FLEMING: Objection. Calls for 16 speculation. 17 THE WITNESS: I don't understand your 18 question. Can you re-ask that please? 19 MS. KLIEBENSTEIN: Sure. 20 BY MS. KLIEBENSTEIN: 21 Q. 2016, the parties are negotiating, and my question 22 is: Do you have an opinion one way or the other 23 if Federal would have rejected the various offers 24 from FICO if Federal had been operating under the 25 belief that it was liable for breach of contract</p>	<p style="text-align: right;">Page 169</p> <p>1 A. I haven't studied that issue. I don't know. What 2 I will say is that there's two -- there's a bunch 3 -- there's a range of possibilities, one of which 4 people often time forget about, and that is that 5 you can have a good faith disagreement about 6 something and still be willing to assume that the 7 other part is -- the other party is correct for 8 the sake of moving a discussion along, but I don't 9 know -- I'll just leave it there. You're looking 10 at me look you're confused. 11 Q. That's my thinking look. 12 A. I was trying to make sure that I was being 13 responsive to your question. 14 Q. You're -- no. That's just an interesting 15 perspective. So to close it up, your analyses 16 didn't focus one way or the other on what Federal 17 -- what beliefs they brought to the table, whether 18 they thought that they were liable for 19 infringement breach of contract or not? 20 MR. FLEMING: Objection. Asked and 21 answered. 22 THE WITNESS: I didn't make a 23 determination, and I don't have any opinions about 24 that. I know from experience that there's a range 25 of possibilities, and that's how I considered that</p>

<p style="text-align: right;">Page 170</p> <p>1 information, and that's what I was trying to 2 summarize in my last answer, and what I was adding 3 to that is that a lot of times people will assume 4 that a party is in outright denial when -- or not 5 admitting even for the sake of moving a discussion 6 along, like, hypothetically what a reasonable 7 outcome would be.</p> <p>8 So you need to consider the full range of 9 possibilities, and that's what I'm trying to say 10 when I am responding to your question that I'm 11 looking at that information with an open mind. 12 BY MS. KLIEBENSTEIN:</p> <p>13 Q. In Paragraph 71 -- Paragraph 71, second sentence, 14 it says, "FICO and Federal did not discuss a named 15 application type license and instead discussed an 16 enterprise license that included discounts up to 17 [REDACTED] That sentence was 18 referring to the 2016 negotiations; correct?</p> <p>19 A. I think so.</p> <p>20 Q. But the parties -- the original Option 2 was a 21 named application option; isn't that right?</p> <p>22 A. I think ultimately what -- I'd have to look and 23 see what the -- and check what the document says. 24 I'm not trying to re-characterize documents or 25 anything like that. I think that they discuss</p>	<p style="text-align: right;">Page 172</p> <p>1 So I think this is -- the statement that 2 I'm making that's more about substance than it is 3 about form.</p> <p>4 Q. Moving on to the Oracle agreement and the Dell 5 agreement, those were settlement agreements in the 6 context of a dispute and possible lawsuit threat; 7 correct?</p> <p>8 A. What do you mean settlement agreements and 9 possible lawsuit? Can you be more specific?</p> <p>10 Q. Well, in both contexts, FICO was discussing 11 initiating suit if the parties didn't come to a 12 resolution; isn't that right?</p> <p>13 A. That may have been referred to.</p> <p>14 Q. You're not sure without looking at the agreements?</p> <p>15 A. Well, I would just want to make sure that I'm 16 characterizing it properly. I mean, documents say 17 what they say.</p> <p>18 Q. And Dell -- you know that Dell is still a customer 19 of FICO. Do you know if Dell acts as a referral 20 source for FICO?</p> <p>21 A. I don't know.</p> <p>22 Q. Do you know how much they pay in maintenance and 23 service fees?</p> <p>24 A. I said earlier I don't know.</p> <p>25 Q. Do you know whether they license any other FICO</p>
<p style="text-align: right;">Page 171</p> <p>1 what they discussed.</p> <p>2 They -- most important part I think there's 3 a sentence that follows that says if FICO and 4 Federal did not discuss the type of license 5 agreement that Mr. Zoltowski is proposing that's 6 what I'm trying to get at ultimately. So that's 7 kind of a transition sentence that leads to the 8 next one.</p> <p>9 Q. Here is Exhibit 257. I'm looking at Option 2. So 10 just to confirm, the parties -- the parties did 11 discuss a named application type license in 2016.</p> <p>12 A. Sort of. Not -- not exactly. This is what I'm 13 trying to get at with pointing you to the next 14 sentence, and also my earlier statements about 15 economic substance over form.</p> <p>16 They might in this page say, hey, we're 17 going to talk about 15 named applications, but 18 they don't describe what they are here. They just 19 roll up a number of \$6.8 million dollars, and 20 that's not the type of license agreement where Mr. 21 Zoltowski is -- is discussing where he has the 22 applications actually named, and then he tries to 23 calculate an amount that's specific to each 24 application categorizing them as small, medium, 25 large.</p>	<p style="text-align: right;">Page 173</p> <p>1 products?</p> <p>2 A. I couldn't tell you off the top of my head.</p> <p>3 Q. And do you know how much Dell has paid FICO in 4 professional services fees since 2013?</p> <p>5 A. I don't think I can give you a specific amount as 6 I sit here right now.</p> <p>7 Q. What is your definition of intrinsic value as you 8 define it in your report?</p> <p>9 A. I think that actually Mr. Zoltowski looked it up 10 and put it in his reply report, and I don't think 11 I had a problem with whatever that definition is 12 that he provided.</p> <p>13 Ultimately what you're trying to get at 14 with intrinsic value is the -- the value that's 15 specific to that asset.</p> <p>16 Q. And so is that the value -- are you -- with 17 intrinsic value, are you looking at the value of 18 Blaze Advisor in general or Blaze Advisor as it 19 relates to Federal?</p> <p>20 A. I think both.</p> <p>21 Q. Okay, and do you know if FICO's standard list 22 prices are based on Blaze Advisor's intrinsic 23 value to FICO?</p> <p>24 A. What do you mean the intrinsic value to FICO?</p> <p>25 That doesn't make sense.</p>

<p style="text-align: right;">Page 174</p> <p>1 Q. So intrinsic value is the value that is specific 2 to that asset; right? 3 A. That's what I said we can use as a working 4 definition at a high level. 5 Q. Yeah, and the intrinsic value of -- of an asset 6 can -- I mean, it can have different values 7 depending on who you are; correct? 8 A. Yes and no. 9 Q. So for -- well, I'll ask my question a different 10 way. Do you know if FICO's standard list prices 11 for its software are based on intrinsic value? 12 A. I haven't seen any evidence that they are based on 13 any valuation principles at all. Yet Mr. 14 Zoltowski relies upon that. 15 Q. And to determine whether FICO's standard list 16 prices are based on intrinsic value, what type of 17 evidence would you want to look at? 18 A. I would want to know if they relate to incremental 19 income, value over alternatives, and match what 20 the market actually pays, not what the list prices 21 are. So those are the three big buckets within my 22 toolbox as a valuation expert, cost marketing 23 income approach, just restated in a slightly 24 different way for that context. 25 Q. Does your report contain an affirmative opinion on</p>	<p style="text-align: right;">Page 176</p> <p>1 Q. Does the intrinsic value of Blaze Advisor include 2 maintenance and support -- an assessment of 3 maintenance and support fees as well? 4 A. It can if those have a reliable connection to 5 whatever the contractual claim or the intangible 6 asset is. 7 Q. In assessing the intrinsic value of Blaze Advisor 8 as it relates to the claims in this case, would 9 that also include an assessment of more than the 10 software and the software license such as 11 marketing support, potential to license other 12 products, professional services, things like that? 13 A. If you're talking about in context of a breach of 14 contract, I would want to know what all the 15 economic aspects are of that contract and the 16 potential activities, economic activities that 17 would be associated with that contract and related 18 breach. 19 Q. So those other items could come into play in some 20 cases? 21 A. Conceptually they could. You need to tie them to 22 the facts and circumstances of each particular 23 case. 24 Q. I think we've discussed this a little bit, but 25 from whose perspective is intrinsic value</p>
<p style="text-align: right;">Page 175</p> <p>1 the intrinsic value of Blaze Advisor? 2 A. I think I certainly include analyses and 3 calculations that have that consideration in mind. 4 So I think that all of my calculations go in the 5 direction of intrinsic or fundamental value. 6 Q. Do you believe in this case that the appropriate 7 measure of damages for breach of contract is the 8 intrinsic value of Blaze Advisor? 9 A. I think that's a concept that is useful. I think 10 ultimately the -- the law will determine what the 11 appropriate remedy is, and if it's a but-for 12 analysis or lost license fees, I think certainly 13 it's helpful to consider the economic value of 14 whatever the asset is in the contract, or whatever 15 the contract would cover, and so I think it's an 16 ingredient. 17 The actual amount is something that's 18 determined by law, but using the -- my skill set 19 and Mr. Zoltowski's skill set we both should be 20 embracing the idea of fundamental economic value, 21 and that's the -- intrinsic value is another word 22 for that. 23 Q. And does -- 24 A. Otherwise we're not using our -- our respective 25 areas of expertise.</p>	<p style="text-align: right;">Page 177</p> <p>1 determined? Is it -- is it Federal's, FICO's, the 2 open market? 3 A. Well, it's really the parties. So Federal and 4 FICO, that's what I'm trying to say, is what -- is 5 this worth to each of them and what would result 6 in a payment that the parties would agree upon, 7 and the marketplace provides some backdrop for 8 that. 9 Q. And to assess what is -- what is this worth to 10 FICO -- 11 MR. FLEMING: What is? What worth? 12 MS. KLIEBENSTEIN: The intrinsic value of 13 the software. What is it worth from FICO's 14 perspective. 15 BY MS. KLIEBENSTEIN: 16 Q. What facts do you have in your report that have a 17 bearing on what it's worth to FICO? 18 A. I don't understand your question. To assess what 19 it's worth to FICO? 20 Q. I can restate it again. 21 A. Sure. 22 Q. We were talking about from whose perspective 23 intrinsic value is measured, open market, FICO 24 Federal, and I understood you to say it's the 25 party -- it's both the parties; is that right?</p>

<p style="text-align: right;">Page 178</p> <p>1 A. In part.</p> <p>2 Q. In part, and my question is: From of the value</p> <p>3 from FICO's perspective, what facts are in your</p> <p>4 report that have a bearing on the value from</p> <p>5 FICO's perspective?</p> <p>6 A. I think the fact that FICO recognizes that it's in</p> <p>7 a marketplace where discounting is standard. So</p> <p>8 that consideration. Certainly FICO is being</p> <p>9 reasonable and considering that this is a</p> <p>10 bilateral exchange, not just a demand that has to</p> <p>11 be met, that it would recognize those practices.</p> <p>12 I think knowing that this contract had been</p> <p>13 entered into in the past and it covered at least</p> <p>14 some similar space I think knowing what happened</p> <p>15 in the past is -- it would be reasonable for FICO</p> <p>16 to consider.</p> <p>17 I think understanding and a willingness to</p> <p>18 consider at least Federal's perspectives I think</p> <p>19 that would be something in a bilateral negotiation</p> <p>20 that would be reasonable for FICO to consider.</p> <p>21 Q. When you're measuring intrinsic value, when you're</p> <p>22 doing that work, what do you do when it's clear</p> <p>23 from the evidence that the parties don't agree on</p> <p>24 the intrinsic value? How do you get to a number</p> <p>25 in that sort of situation?</p>	<p style="text-align: right;">Page 180</p> <p>1 considerations that a valuation expert, or an</p> <p>2 economist, or a financial analyst would look at</p> <p>3 are present, albeit in different sort of words but</p> <p>4 the concepts are present, and then from I think</p> <p>5 FICO's perspective, those concepts are present</p> <p>6 too.</p> <p>7 FICO knew that there were other companies</p> <p>8 that had been able to move away, that there were</p> <p>9 competitors that FICO had competitors that offered</p> <p>10 comparable products and that helped determine a</p> <p>11 market price. I think that FICO wanted to</p> <p>12 negotiate the highest price that it could without</p> <p>13 any discounts, but it reflected in its</p> <p>14 negotiations a willingness to provide discounts.</p> <p>15 So again, from FICO's perspective, we see</p> <p>16 the principles that I've been talking about</p> <p>17 present, maybe in different terms or different</p> <p>18 words, but those general principles are present.</p> <p>19 MR. FLEMING: Can we take a short break?</p> <p>20 We've been going for over an hour.</p> <p>21 MS. KLIEBENSTEIN: Sure.</p> <p>22 THE VIDEOGRAPHER: We are going off the</p> <p>23 record. The time now is 4:01 p.m.</p> <p>24 (Whereupon a short break was taken from</p> <p>25 4:01 p.m. to 4:12 p.m.)</p>
<p style="text-align: right;">Page 179</p> <p>1 A. Well, you consider what the options are and</p> <p>2 whether a party could license other software or</p> <p>3 develop its own applications. That would be one</p> <p>4 area.</p> <p>5 Q. Got it.</p> <p>6 A. Or if it creates incremental income, or specific</p> <p>7 cost savings. Those would be other ways to look</p> <p>8 at it.</p> <p>9 Q. Do you know if FICO and Federal did an intrinsic</p> <p>10 an analysis of the intrinsic value of Blaze</p> <p>11 Advisor when they were negotiating in 2016?</p> <p>12 A. I wouldn't expect for them to do it in the same</p> <p>13 way that a valuation expert would do it, but the</p> <p>14 principles that they considered are present and</p> <p>15 were present.</p> <p>16 I think we know that Federal knew that it</p> <p>17 had other options that it could use Blaze Advisor,</p> <p>18 or use alternatives to Blaze Advisor or develop</p> <p>19 its own alternatives to Blaze Advisor. We talked</p> <p>20 about that at length. We know that it had from</p> <p>21 its negotiations some desire to see what the basis</p> <p>22 was for the claims that FICO was making, like, how</p> <p>23 do you think this is helping out, and what sort of</p> <p>24 value does it create for our business, and so from</p> <p>25 Federal's perspective, those types of</p>	<p style="text-align: right;">Page 181</p> <p>1 THE VIDEOGRAPHER: We are back on the</p> <p>2 record. This marks the beginning of Media 6 in</p> <p>3 the deposition of Chris Bakewell. The time now is</p> <p>4 4:12 p.m.</p> <p>5 BY MS. KLIEBENSTEIN:</p> <p>6 Q. All right. Let's talk about the cost approach,</p> <p>7 the income approach, and the market approach.</p> <p>8 Am I understanding you correctly that those</p> <p>9 three pieces form the underpinnings for the</p> <p>10 determination of intrinsic value?</p> <p>11 A. They can. I mean, those are -- if you take</p> <p>12 everything that's in the skill set of an</p> <p>13 economist, or a finance person, or somebody who</p> <p>14 does valuation, you can put them into those three</p> <p>15 buckets, and it's -- it's -- I found it to be a</p> <p>16 useful way to describe my expertise in a way that</p> <p>17 ordinary people can understand.</p> <p>18 Q. And when you're -- when you're applying this</p> <p>19 framework, do you always have to consider all</p> <p>20 three, the cost, the income, and the market, or</p> <p>21 can just one of those factors be instructive of</p> <p>22 the value of the asset?</p> <p>23 A. Your question is sort of like -- has a non</p> <p>24 sequitur in it, like, I don't mean that like it</p> <p>25 sounds like I'm not being nice when I say that. I</p>

<p style="text-align: right;">Page 182</p> <p>1 mean it to be nice to try to help you formulate a 2 better question. 3 Those -- those three -- you described three 4 things at the beginning and then you compared that 5 to one when you said or, and it didn't really 6 follow. So maybe you could re-ask the question -- 7 Q. Sure. 8 A. -- I'm trying to help you ask a good one. 9 Q. Cost, income, market approach. Those are three 10 tools that you use to determine the value of a 11 claim or an asset? 12 A. That's true. 13 Q. Okay, and I'm wondering if it's -- if it's an and 14 or an or. Do you have to assess all of them when 15 you're trying to determine the value of an asset 16 of a claim, or are there certain instances where 17 you can rely on only one of those three? 18 A. So you can consider all -- you should consider all 19 the possible ways that you can measure something, 20 and then those might not always be a fit, and it's 21 plausible that you could say that there's only one 22 way that applies, fits the facts and circumstances 23 of the case, and when there's multiple tools that 24 you can use, you're supposed to reconcile them 25 against one another.</p>	<p style="text-align: right;">Page 184</p> <p>1 not discussed. I think that what I've seen, and 2 I'm talking as a lay person which is just general 3 understanding of the law, is a direction toward 4 nexus, that there needs to be a connection to 5 whatever the allegations are in the case, and I 6 don't know that I've seen the cost approach 7 referred to either way, but that's -- those are 8 just answers as -- that I can give you as a lay 9 person regarding my understanding of the law. I'm 10 not offering a legal opinion. 11 Q. And what about the income approach and market 12 approach; do you believe those two approaches 13 should be considered when determining the 14 disgorgement amount here? 15 A. My answer would be the same. I don't know that 16 the laws discuss those. I think those are helpful 17 or instructive to understanding the issues of 18 nexus and whether or not revenues have a 19 reasonable connection to the copyright, but I 20 think the law describes more of a -- ideas related 21 to nexus. That's my understanding, or uses 22 terminology to describe ideas that includes the 23 word nexus. 24 Without being a lawyer, I'm just telling 25 you what my understanding is in general.</p>
<p style="text-align: right;">Page 183</p> <p>1 Q. And do you believe the cost approach in this case 2 should be considered with respect to determining 3 the breach of contract damages? 4 A. I think the cost approach provides some insights. 5 I'm not sure if it provides a total value that I 6 would use, but I think it provides some insights 7 into the fact that the licensee of Blaze -- 8 licensees of Blaze have the option to do other 9 things, and that's instructive I think as a 10 principle, but I don't know that I get a value out 11 of that analysis. 12 Q. And what about with respect to copyright damages; 13 do you believe the cost approach should be 14 considered to inform the amount for disgorgement 15 in this case? 16 A. So my understanding of law for copyright 17 infringement damages is that if you're talking 18 about reasonable royalty or lost royalty income 19 alternatives are informative, and copyright law -- 20 I'm not a lawyer, but I'm just telling you my 21 understanding, has -- is starting to recognize 22 some of those principles in the cases that come 23 out that I've seen over time. 24 In terms of disgorgement, I don't know that 25 I've seen the idea of alternatives discussed or</p>	<p style="text-align: right;">Page 185</p> <p>1 Q. What facts does your report identify as pertinent 2 to the damages analysis in this case under the 3 cost approach? 4 A. I have a section in my report where I discuss how 5 -- maybe we can find it. Do you have that page 6 number where I discuss what the alternatives are? 7 Q. 1 -- Page 35. 8 A. Thank you. Oh. Right. So I go on and I ask Mr. 9 McCarter some questions about, hey, what else -- 10 what are the options, how else would you 11 accomplish the same result that the accused 12 functionality claims to accomplish, and he 13 provided me with some examples, and I think that's 14 helpful to understand what the economic footprint 15 is and the substitute products of the claims that 16 are at issue here. 17 Q. Any other -- anything else that's pertinent to the 18 cost approach? 19 A. Those are the areas I discussed in my report, and 20 that's kind of the idea behind considering that. 21 I mean, that -- that's going to be somewhat 22 instructive as to market values. If there's 23 different options and competition, that's going to 24 show up in market values. 25 Q. And so the first one I see is manual decisions,</p>

Page 186

1 manuals lookup procedure. Is your support for
 2 your opinions relating to the manual decision
 3 alternative is that solely from Mr. McCarter?
 4 A. No. I think that's consistent with what people
 5 from Fed told me, particularly Mr. Iannuzzi that,
 6 hey, that wouldn't be as efficient, but if Federal
 7 had to do that, it could.
 8 Q. Do you have any knowledge whether Federal could
 9 achieve the same results in the same period of
 10 time that it has with Blaze Advisor doing the
 11 manual lookup procedure?
 12 A. Yeah. I said it would be less efficient.
 13 Q. And do you know whether Federal would experience
 14 additional costs using the manual lookup
 15 procedure?
 16 A. It might. That's why I haven't used it as a value
 17 to quantify an amount.
 18 Q. Did you ask anyone at Federal whether it would
 19 cost extra to use the manual lookup procedure
 20 instead of Blaze Advisor?
 21 A. I did. I discussed that with Mr. Iannuzzi and
 22 others, and I -- I told you that a moment ago.
 23 Q. And -- and you said it might additional cost?
 24 A. Correct. It might. He said that in some
 25 instances they could do things manually and it

Page 187

1 might be better actually, or -- but in others,
 2 it's better to automate, and there the value is
 3 really in automation, and what he was trying to I
 4 think convey, at least from my perspective, and
 5 this is reasonable and I think instructive too is
 6 that the value is really in the business process
 7 and the people that are making decisions that --
 8 there's tools that are available to help support
 9 the decisions, but this is -- this technology
 10 isn't, like, a total replacement for the business
 11 process or the -- the human aspects of making
 12 decisions.
 13 Q. And what about hard coding? Your support for your
 14 statements about hard coding is Mr. McCarter; is
 15 that correct?
 16 A. Yes, and I also spoke with Mr. Iannuzzi about
 17 that.
 18 Q. And do you know if Federal could achieve the same
 19 results in the same period of time using hard
 20 coding instead of Blaze Advisor?
 21 A. I think it would be what I wrote, that it's less
 22 efficient, it would have been closer to Blaze
 23 Advisor or substitute products. You're at least
 24 moving in the right direction. I mean, I'm
 25 providing here an order in Paragraph 131 to help

Page 188

1 understand or put into context what the software
 2 does, and here you're at least going in the right
 3 direction that you'd be able to automate, but I
 4 think you lose some flexibility, and in some
 5 instances, as Mr. Iannuzzi told me and Mr.
 6 McCarter said, it might actually be better, but in
 7 most instances, it would be better to have a more
 8 flexible tool than something that would need to be
 9 modified every time the business changed.
 10 Q. A more flexible tool would be Blaze Advisor or
 11 something like Blaze Advisor?
 12 A. That's where I have the next thing in sequence
 13 called Other Products. There's a bullet point
 14 called Other Products. So this is building up
 15 conceptually how to think about solving this
 16 problem.
 17 Q. So under the next products, you identify IBM,
 18 Oracle, or CA; is that right?
 19 A. Yes.
 20 Q. And do you know why Federal did not purchase the
 21 IBM ODM software product?
 22 A. I think Federal decided to actually go in another
 23 direction and develop kind of what I'll call its
 24 own homegrown solution using a tool called Drools.
 25 Q. Did you report -- does your report contain any

Page 189


1 information about how much the IBM, Oracle, or CA
 2 technology business rules management software
 3 costs?
 4 A. At one point, I knew that and saw that. I don't
 5 know if I have something that that's specific
 6 that's in my report.
 7 Q. Does your report contain any descriptions of the
 8 IBM, Oracle, and CA technology products so that we
 9 can confirm they have the same features and
 10 functions as Blaze Advisor?
 11 A. I relied upon Mr. McCarter for that. So that's
 12 something to ask him. I would defer to him for
 13 that. Also Mr. Iannuzzi told me about that.
 14 Q. Tell me about your call with Mr. Iannuzzi.
 15 A. What would you like to know?
 16 Q. What -- what you gentlemen talked about.
 17 A. We talked about his role in the business, and the
 18 Drools solution, and these alternative software
 19 products, and the things I cited to him for in my
 20 report and that we discussed today. I don't think
 21 there's anything else.
 22 Q. [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

Page 190	Page 192

<p style="text-align: right;">Page 194</p> <p>1 Q. The income approach; what facts does your report 2 identify as pertinent to this case under the 3 income approach? 4 A. Well, I discussed how if I'm trying to measure the 5 fundamental, or intrinsic value, or just the value 6 of an asset Mr. Zoltowski uses just the term 7 value, and I think we're all talking about the 8 same thing, then -- or we should be, what I'm 9 trying to get at is whether or not there's any 10 evidence of incremental income, like changes in 11 revenue, increases in revenue, or any cost savings 12 like reduced cost, or some combination of both, 13 and we talked about that earlier at the beginning 14 of the day. 15 Q. And are there any are there any facts in your 16 report that identify any facts that relate to the 17 income approach? Specific facts -- 18 A. There's a lot. I discuss it in my report, and the 19 main thing we've talked about throughout today and 20 I mentioned earlier is that Mr. Zoltowski is 21 saying that he's an expert in valuation and that 22 he's providing values, but he hasn't identified 23 anything that I would say gets categorized under 24 the income approach. He hasn't identified any 25 incremental income or cost savings, and I haven't</p>	<p style="text-align: right;">Page 196</p> <p>1 Q. And those types of -- those types of arrangements 2 give a licensor additional value beyond the 3 license fee itself; correct? 4 A. It can. 5 Q. It can, and when you were reviewing the agreements 6 in Exhibit 12, did you undertake to analyze which 7 agreements reflected those additional marketing 8 assistance? 9 A. Some of them might say that. It wouldn't surprise 10 me. Sometime people will put that in a license, 11 and sometimes they won't. 12 My experience is that -- two things. Some 13 companies are more willing than others to commit 14 to doing something like that, or put it in 15 writing, or even to do it, but most -- most 16 companies are willing to kind of just get along 17 with everyone, and if -- the principle is that, 18 hey, look, if you do a good job, I'd be more than 19 happy to talk to people about you're doing a good 20 job, and if you're frustrating me and not doing a 21 good job, then I'll try to be polite but you 22 probably shouldn't use me as a reference. 23 Q. Do you know if that's how FICO does its marketing 24 relationships, or is that just a -- 25 MR. FLEMING: Foundation.</p>
<p style="text-align: right;">Page 195</p> <p>1 seen any of that stuff in the ordinary course of 2 business, and there's reasons I think 3 fundamentally why, and we talked about that 4 throughout the day. 5 Q. And what about the market approach; what facts 6 does your report identify as pertinent to the 7 damages analysis in this case under the market 8 approach? 9 A. There's other licenses, and there's license 10 negotiations. There's these actual contracts that 11 are alleged to have been breached, and what the 12 past payments were. Those would be some examples. 13 Q. Were the licenses identified in Exhibit 12 -- did 14 you undertake any analysis to determine which 15 involved -- which involved -- which included 16 additional marketing assistance on behalf of the 17 licensee? 18 A. I don't understand that question. 19 Q. So do you understand that from time to time when 20 FICO engages with their customers in order to 21 achieve further discounts that licensees will give 22 marketing support, referrals, case studies, things 23 of that nature? 24 A. That wouldn't be unusual. I've seen that in 25 businesses like this.</p>	<p style="text-align: right;">Page 197</p> <p>1 BY MS. KLIEBENSTEIN: 2 Q. -- industry-wide observation? 3 MR. FLEMING: Objection. Foundation. 4 Time. 5 THE WITNESS: I think I'd have to know more 6 specifics. I'm just telling you what my 7 experience is and how the evidence I've reviewed 8 in this case is consistent with my experience, and 9 the fact that it might be referred to in a license 10 or two that needs to be considered in context, and 11 I've just provided you the context. You can't 12 take that stuff out of context. 13 BY MS. KLIEBENSTEIN: 14 Q. Did you review the amount of consulting fees that 15 each of the licensees identified in Exhibit 12 16 paid to FICO to date? 17 A. I tried to. That's a little -- I don't know that 18 I have access to that information specifically. I 19 know how much has been paid by Fed though. That's 20 the \$6.7 million dollar number that I cite to, 21 maybe it's 6.6, and I know that FICO seeks to 22 provide consulting services and charge for those 23 services. 24 Q. In your report -- 25 A. Oh. I discuss that under Oracle too in my</p>

<p style="text-align: right;">Page 198</p> <p>1 discussion of Oracle how Oracle regarded that.</p> <p>2 Q. Moving to a different topic, the pricing matrix</p> <p>3 topic --</p> <p>4 A. What is that? I don't know what you're talking</p> <p>5 about. Are you changing subjects to pricing?</p> <p>6 Q. It is totally different. Yes.</p> <p>7 A. Okay. That's --</p> <p>8 Q. Page 47.</p> <p>9 A. I follow you.</p> <p>10 Q. I'm doing some cleanup.</p> <p>11 A. All right.</p> <p>12 Q. So I'm moving to 47 to give you an anchor.</p> <p>13 A. Thank you.</p> <p>14 MR. FLEMING: You're talking Paragraph 47?</p> <p>15 MS. KLIEBENSTEIN: Page.</p> <p>16 THE WITNESS: All right.</p> <p>17 BY MS. KLIEBENSTEIN:</p> <p>18 Q. This is just an anchor to start our conversation.</p> <p>19 I understand your report provides different sizing</p> <p>20 levels for the applications that are accused of</p> <p>21 infringement in this case; is that correct?</p> <p>22 A. In part. I know where you are. There's a table.</p> <p>23 So I see that table.</p> <p>24 Q. You said in part. How did you not agree with</p> <p>25 that, my question in totality?</p>	<p style="text-align: right;">Page 200</p> <p>1 task frankly, and so it includes more than the</p> <p>2 last four years. It's overinclusive.</p> <p>3 Q. Are there any cases that should be added to this</p> <p>4 list?</p> <p>5 A. No.</p> <p>6 Q. How many expert reports did you sign and serve in</p> <p>7 May of this year?</p> <p>8 A. I don't know.</p> <p>9 Q. You don't know?</p> <p>10 A. No.</p> <p>11 Q. Was it more than five, less than five?</p> <p>12 A. I don't know.</p> <p>13 Q. How many reports have you signed and served in</p> <p>14 June of this year?</p> <p>15 A. Maybe two, three.</p> <p>16 Q. But you can't remember may?</p> <p>17 MR. FLEMING: Objection. Asked and</p> <p>18 answered twice already. That would be the third</p> <p>19 time.</p> <p>20 THE WITNESS: This is -- it's June. It's</p> <p>21 the end of June. I don't remember May. It's the</p> <p>22 end of the day. So I don't know. I gave you an</p> <p>23 estimate for June.</p> <p>24 BY MS. KLIEBENSTEIN:</p> <p>25 Q. Was it more than one in May?</p>
<p style="text-align: right;">Page 199</p> <p>1 A. Because I'm relying upon Doctor Kursh for this.</p> <p>2 Q. And so that's my question. The sizing that's</p> <p>3 presented in your report that's from reliance on</p> <p>4 Doctor Kursh?</p> <p>5 A. He did that analysis specifically. Yes.</p> <p>6 Q. Okay. Do you know how much time you and your team</p> <p>7 have spent on your report to date?</p> <p>8 A. I don't have the number of hours other than my</p> <p>9 own.</p> <p>10 Q. Do you know the fees that have been charged to</p> <p>11 Federal for your report to date?</p> <p>12 A. Yes.</p> <p>13 Q. And what is that?</p> <p>14 A. Approximately \$250,000.</p> <p>15 Q. And I counted -- when I looked at your CV, I</p> <p>16 counted 94 engagements in the last 4 years; is</p> <p>17 that right?</p> <p>18 A. It's a little bit -- I mean, you can count that</p> <p>19 document, but that would be overinclusive. That</p> <p>20 would be an overstatement.</p> <p>21 Q. In what way?</p> <p>22 A. Because that document is at least over the last</p> <p>23 four years. My assistant pulls that together, and</p> <p>24 her instruction is to include at least what's in</p> <p>25 the last four years, and that's kind of a hard</p>	<p style="text-align: right;">Page 201</p> <p>1 A. Probably.</p> <p>2 Q. Was it more than two?</p> <p>3 A. I don't know.</p> <p>4 Q. Did you attend any trials in May of 2019?</p> <p>5 A. Maybe. I don't remember one. I don't think so.</p> <p>6 Q. So is that a zero, or a one, or you don't know?</p> <p>7 A. I don't remember attending one. It's possible</p> <p>8 there was a trial that I attended and testified at</p> <p>9 recently in Houston involving another party called</p> <p>10 Federal, Fedd actually F-E-D-D, Fedd Wireless.</p> <p>11 That may have been in -- in May.</p> <p>12 Q. For the transcripts identified on in Paragraph 14</p> <p>13 of your report, which did you personally review?</p> <p>14 A. I think all of them frankly. It's a lot of</p> <p>15 transcripts and testimony. I will say that</p> <p>16 there's -- there's some I reviewed in more detail</p> <p>17 than others, and I also asked people to highlight</p> <p>18 or flag certain points, certain parts within some</p> <p>19 of these transcripts.</p> <p>20 Q. Tell me about your interview with Ellen Garnes.</p> <p>21 A. With who?</p> <p>22 Q. Ellen Garnes, commercial product analyst.</p> <p>23 A. I think that she may have been on a call along</p> <p>24 with Mr. Pandey, but I'm -- I'm trying to -- I'm</p> <p>25 trying to be responsive and not guess. I'm sort</p>

<p style="text-align: right;">Page 202</p> <p>1 of pulling things together to give you a</p> <p>2 reasonable estimate, but I don't recall Ms. Garnes</p> <p>3 saying much frankly because I think she was on a</p> <p>4 call that I had with someone else.</p> <p>5 Q. And did she say anything on that call?</p> <p>6 A. I think so.</p> <p>7 Q. And what do you recall?</p> <p>8 A. Here's what I can tell you why this list is so</p> <p>9 long is that I had a bunch of questions for people</p> <p>10 about how the accused functionality works, where</p> <p>11 it sat, how to measure it, how to measure the</p> <p>12 financial activities associated with -- with it,</p> <p>13 to the extent you could at all, and I had a lot of</p> <p>14 what I'll say relative to at least other cases</p> <p>15 kind of exploratory discussions, and I think</p> <p>16 that's driven by the fact of what I kind of came</p> <p>17 to learn over time is that's driven by the fact</p> <p>18 that this Blaze Advisor product is -- or software</p> <p>19 is -- is not something that generates revenues, as</p> <p>20 we've discussed, and it's just one aspect of many</p> <p>21 within the business kind of deeply in the -- in</p> <p>22 the business is just one aspect of the -- is the</p> <p>23 flow charts that I've discussed characterized.</p> <p>24 So there's a list of names here that's</p> <p>25 lengthy because a couple of calls we had we had</p>	<p style="text-align: right;">Page 204</p> <p>1 probably on a call with multiple people.</p> <p>2 Q. Do you recall what she told you?</p> <p>3 A. Not other than what I just said.</p> <p>4 Q. Helen Mencke; what did you speak with Ms. Mencke</p> <p>5 about?</p> <p>6 A. Same thing. I'll give you the same answer. She</p> <p>7 was on background calls.</p> <p>8 Q. And so you don't remember what she told you</p> <p>9 specifically?</p> <p>10 A. Not specifically.</p> <p>11 Q. What about generally?</p> <p>12 A. You know, I think one way it would be maybe</p> <p>13 helpful to you in understanding this list and the</p> <p>14 people's roles is that if there's something that I</p> <p>15 relied upon somebody specifically for or found</p> <p>16 particularly useful I would have cited to them in</p> <p>17 a footnote in my report.</p> <p>18 Otherwise I think that I'm going to give</p> <p>19 you the same answer, that these people -- I spoke</p> <p>20 with them about and gained a background</p> <p>21 understanding of information, and the business,</p> <p>22 and Blaze Advisor.</p> <p>23 Q. So for Ms. Mencke, you don't recall what she said</p> <p>24 to you?</p> <p>25 A. I think that falls in the same category.</p>
<p style="text-align: right;">Page 203</p> <p>1 multiple people on the call, and I asked general</p> <p>2 questions that were, like, exploratory in nature,</p> <p>3 introduced myself and said, hey, these are the</p> <p>4 types of problems I'm trying to address and solve,</p> <p>5 and this is the type of information I'd like to</p> <p>6 see, and then there were followups and the like.</p> <p>7 So that's a long answer. Hopefully that's</p> <p>8 helpful.</p> <p>9 Q. I -- what did you speak about with Ms. Garnes?</p> <p>10 A. I think it was -- it falls under the</p> <p>11 categorization that I just provided you with. It</p> <p>12 was background about the business and where Blaze</p> <p>13 Advisor sits.</p> <p>14 Q. And what did she tell you?</p> <p>15 A. I think she -- I don't remember.</p> <p>16 Q. Ms. Verduin, Nancy Verduin; what did you speak</p> <p>17 with her about?</p> <p>18 A. Verduin. The same. She's from the commercial</p> <p>19 underwriting group. I think she mostly listened</p> <p>20 to questions and maybe had questions back for me</p> <p>21 about understanding what it is that we were hoping</p> <p>22 to study.</p> <p>23 Q. And do you recall what questions did you ask Nancy</p> <p>24 Verduin?</p> <p>25 A. No. Just that they were exploratory, and she was</p>	<p style="text-align: right;">Page 205</p> <p>1 Q. And Mr. Schraer; same answer?</p> <p>2 A. Yes.</p> <p>3 Q. Alissa Theberge?</p> <p>4 A. That's the same.</p> <p>5 Q. So you don't recall what she said to you</p> <p>6 specifically either?</p> <p>7 A. Yeah. She's in the same category that I just</p> <p>8 provided.</p> <p>9 Q. What about Kevin Harkin?</p> <p>10 A. I think that's a little bit different. Mr. Harkin</p> <p>11 I can remember speaking about what sort of</p> <p>12 information would be relevant financially, how he</p> <p>13 could respond to the interrogatory questions, what</p> <p>14 sort of financial information could be produced.</p> <p>15 I think some of the production of financial</p> <p>16 information that I relied upon in my report were</p> <p>17 either the result of -- or I cited to in my report</p> <p>18 were produced as a result of my request to Mr.</p> <p>19 Harkin, and then I would have interviewed them --</p> <p>20 him about those documents and their meaning, and</p> <p>21 he might have had some questions about how to</p> <p>22 respond to some of your discovery requests.</p> <p>23 Q. What about Ramesh Pandey; what did you speak with</p> <p>24 Mr. Pandey about?</p> <p>25 A. I spoke with him a couple of times, and one time I</p>

<p style="text-align: right;">Page 206</p> <p>1 spoke with him I remember there were multiple 2 people on the call. The next time there might 3 have been other people on the call but it was 4 primarily me and him speaking, and I had questions 5 for him about business process, where Blaze 6 Advisor sits. I think that some of the documents 7 that were produced that are flow charts came about 8 as a result of my questions. 9 I said, hey, do you have any -- any flow 10 charts or business process diagrams to keep in the 11 ordinary course of business, and he said sure, and 12 then I saw that information was produced, and I 13 asked him about it. 14 Q. What about Tracie Jerd; what did you talk to Ms. 15 Jerd about? 16 A. I think the remaining names are going to be the 17 same. I don't -- I'd have to look in a footnote 18 to my report. If -- if there's not a footnote, 19 the best I'll be able to tell you is that there 20 was background, or she was a one of multiple 21 people that was on a call. 22 Q. And what about Jennifer Stantucci; what did you 23 speak with Ms. Stantucci about? 24 A. I think the same thing. I recall maybe a little 25 bit more. I think I spoke with her relatively</p>	<p style="text-align: right;">Page 208</p> <p>1 STATE OF MINNESOTA) 2) SS 3 COUNTY OF HENNEPIN) 4 5 I Jacqueline McKone, certified shorthand reporter 6 and notary public for the State of Minnesota, 7 certify there came before me the deponent herein 8 who was sworn by me to testify to the truth 9 concerning the matters in the cause, and I certify 10 this transcript is a true transcript of my 11 original shorthand notes. 12 I certify I am neither attorney nor counsel for, 13 nor related to, nor employed by any of the parties 14 to the action in which this deposition is taken; 15 and furthermore, I am not a relative or employee 16 of any attorney or counsel employed by the parties 17 hereto or financially interested in this action. 18 19 The cost of the original transcript has been 20 charged to the party noticing the deposition, and 21 all parties ordering copies are charged at the 22 same rate for such copies. 23 24 IN WITNESS WHEREOF, I have affixed my notary seal 25 this day: 2 July 2019  Jacqueline McKone</p>
<p style="text-align: right;">Page 207</p> <p>1 early on, several months prior to my report, but 2 -- and about understanding the business. 3 Q. What about Chase McCarthy; what did you speak with 4 him about? 5 A. I think he might have been on a call with Mr. 6 Pandey, and I spoke primarily with Mr. Pandey. 7 That's how I remember it. 8 Q. And finally, Claudio Ghislanzoni; what did you 9 speak with Claudio about? 10 A. I don't have a specific recollection so I'd say 11 background. Unless there's a footnote where I 12 cite to him. 13 MS. KLIEBENSTEIN: All right. No further 14 questions. 15 MR. FLEMING: All right. We will read and 16 sign. Thank you. 17 THE VIDEOGRAPHER: This marks the end of 18 the deposition of Chris Bakewell. The time now is 19 4:56 p.m. We're off the record. 20 (Whereupon the deposition adjourned at 4:56 21 p.m.) 22 23 24 25</p>	<p style="text-align: right;">Page 209</p> <p>1 Veritext Legal Solutions 2 1100 Superior Ave 3 Suite 1820 4 Cleveland, Ohio 44114 5 Phone: 216-523-1313 6 7 July 9, 2019 8 To: Terrence Fleming, Esq. 9 10 Case Name: Fair Isaac Corporation v. Federal Insurance Company 11 Veritext Reference Number: 3404762 12 13 Witness: Chris Bakewell Deposition Date: 6/28/2019 14 15 Dear Sir/Madam: 16 17 Enclosed please find a deposition transcript. Please have the witness 18 review the transcript and note any changes or corrections on the 19 included errata sheet, indicating the page, line number, change, and 20 the reason for the change. Have the witness' signature notarized and 21 forward the completed page(s) back to us at the Production address 22 shown 23 above, or email to production-midwest@veritext.com. 24 25 If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived. Sincerely, Production Department NO NOTARY REQUIRED IN CA</p>

Page 210	Page 212
<p>1 DEPOSITION REVIEW CERTIFICATION OF WITNESS</p> <p>2</p> <p>3 ASSIGNMENT REFERENCE NO: 3404762 CASE NAME: Fair Isaac Corporation v. Federal Insurance Company DATE OF DEPOSITION: 6/28/2019</p> <p>4 WITNESS' NAME: Chris Bakewell</p> <p>5 In accordance with the Rules of Civil Procedure, I have read the entire transcript of 6 my testimony or it has been read to me.</p> <p>7 I have made no changes to the testimony as transcribed by the court reporter.</p> <p>8</p> <p>9 Date Chris Bakewell</p> <p>10 Sworn to and subscribed before me, a Notary Public in and for the State and County, 11 the referenced witness did personally appear and acknowledge that:</p> <p>12 They have read the transcript; 13 They signed the foregoing Sworn Statement; and</p> <p>14 Their execution of this Statement is of their free act and deed.</p> <p>15</p> <p>16 I have affixed my name and official seal</p> <p>17 this ____ day of _____, 20 ____.</p> <p>18 Notary Public</p> <p>19 Commission Expiration Date</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 ERRATA SHEET VERITEXT LEGAL SOLUTIONS MIDWEST</p> <p>2 ASSIGNMENT NO: 3404762</p> <p>3 PAGE/LINE(S) / CHANGE /REASON</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 Date Chris Bakewell</p> <p>21 SUBSCRIBED AND SWORN TO BEFORE ME THIS _____</p> <p>22 DAY OF _____, 20 ____.</p> <p>23 _____</p> <p>24 Notary Public</p> <p>25 Commission Expiration Date</p>
<p>Page 211</p> <p>1 DEPOSITION REVIEW CERTIFICATION OF WITNESS</p> <p>2</p> <p>3 ASSIGNMENT REFERENCE NO: 3404762 CASE NAME: Fair Isaac Corporation v. Federal Insurance Company DATE OF DEPOSITION: 6/28/2019</p> <p>4 WITNESS' NAME: Chris Bakewell</p> <p>5 In accordance with the Rules of Civil Procedure, I have read the entire transcript of 6 my testimony or it has been read to me.</p> <p>7 I have listed my changes on the attached Errata Sheet, listing page and line numbers as 8 well as the reason(s) for the change(s).</p> <p>9 I request that these changes be entered as part of the record of my testimony.</p> <p>10</p> <p>11 I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my 12 testimony and be incorporated therein.</p> <p>13</p> <p>14 Date Chris Bakewell</p> <p>15 Sworn to and subscribed before me, a Notary Public in and for the State and County, 16 the referenced witness did personally appear and acknowledge that:</p> <p>17 They have read the transcript; They have listed all of their corrections 18 in the appended Errata Sheet; They signed the foregoing Sworn 19 Statement; and</p> <p>20 Their execution of this Statement is of their free act and deed.</p> <p>21 I have affixed my name and official seal</p> <p>22 this ____ day of _____, 20 ____.</p> <p>23 Notary Public</p> <p>24</p> <p>25 Commission Expiration Date</p>	

[0001 - 257]

Page 1

0	11.1. 139:21	109:2 110:16	200 2:9
0001 3:11,20	1100 209:1	120:8,9 122:22,25	2001 8:6
0001-0003 3:22	11:38 82:7	142:1	2006 166:11,12,14
0001-0004 3:24	11:48 82:9	171 3:16	2013 132:10 137:5
0001-0020 3:18	11:49 82:13	1788 122:3	137:8 141:15,18
001 131:11	12 43:12 120:3	17884 3:22 132:25	141:23,25 142:10
017882 3:18	155:12,13 158:15	133:9,11,15 135:6	144:7 173:4
017883 3:24	160:4 195:13	135:15	2015 137:5,8
017884 131:11	196:6 197:15	17885 136:21	141:15,18 142:10
017885 3:20	122 3:17	179 190:15,15,18	144:7
017915 3:11	127 190:10,16	191:6	2016 118:25
1	128 190:10,16	18 43:18 101:22	119:19,20 137:6
1 4:21 29:24 35:4	192:22	102:4 142:1	142:3,15 162:2,9
43:1 49:20 50:14	12:51 114:21,23	162:14,18	163:15,23 167:4
111:5 119:9	13 43:13	18.4 117:16	167:11,21 168:8,9
122:15,19 131:21	131 3:21 187:25	180 82:22 115:23	168:23 170:18
132:4 157:9	136 3:19	181 192:13	171:11 179:11
162:21 185:7	14 43:14 94:9	182 112:21,25	2017 118:25
1.3 162:20	141:25 201:12	192:13	119:20 137:6
1.47 162:18 163:2	14.14 117:8	1820 209:2	2018 117:15
10 29:25 43:10	140 3:12	184 113:2	118:10,12,18,22
92:10 148:10,14	145 3:23	19 43:19 101:22	118:25 119:14,14
149:9	15 37:24 43:15	102:4 132:11	119:16,20 120:1,1
10,000 115:7	72:4 141:25	193 83:25 84:9	120:3 142:3,15
121:13	171:17	85:6	2019 1:25 4:5,12
100 33:13 34:1,9	1500 70:20,24 71:6	197 86:20	119:21 141:24
157:2	71:8,24	1995 8:6	201:4 208:16
102 3:9	158 20:1 21:9	1:41 114:23	209:4
103 3:10 17:8	16 1:4 43:16 91:11	1:42 115:2	20924 208:18
104 16:8	117:1,2,3,7,9,12	2	21 43:21
105 16:8	117:15 118:6	2 28:9 29:17 35:5	216-523-1313
1054 1:4	119:7 120:9	43:2,14 170:20	209:3
106 12:5	141:25	171:9 208:16	22 43:22
107 17:8	16.1 117:9	2.1 28:10	224 51:1
10:14 43:10,12	16.2 117:10	2.45 117:9,10	229 51:1
10:33 43:12	168 74:11 75:23	2.456 116:23 117:6	23 43:23 91:18
10:34 43:16	17 43:17 91:11	119:5	24 43:24 120:3
11 43:11 96:25	92:2,6,18 93:11,21	20 43:20 72:1,4	25 43:25
11.1 139:10 141:6	94:23 95:6 96:1	101:22 102:5	250,000 199:14
	96:15 99:12 100:2	210:16 211:22	257 3:16 171:9
	102:3 108:21	212:22	

[26 - accept]

Page 2

26 25:24,24 26:18 170:17 27 132:10 28 1:25 4:5,12 2:30 140:11 2:37 140:16,18 2:49 140:18 2:50 140:24 3 3 8:21 26:24 43:3 82:11 122:16,16 138:20 141:21 3.6 17:7 25:6,10 3.6. 25:9 46:12 31 10:20 32 10:20 3200 2:3 5:3 33 55:3,5 332-5300 2:4 332-9081 2:5 3404762 209:7 210:2 211:2 212:2 35 69:14,23 157:21 185:7 36 70:10,17 120:3 157:22 37 70:10 71:25 38 191:6 4 4 3:7 8:21 43:4 114:25 137:3 199:16 4.3 118:25 4.3. 109:22 120:15 4.6 118:25 4.7 118:25 40 158:9 159:1 4000 2:9 409 3:17 122:1,4,6 122:14,24 123:7	124:10,13,20 125:2 127:2,4 129:1,25 131:3 413 3:19 136:21 138:11,17 140:4 144:14,16,19 416 3:21 131:13 418 3:23 145:10,12 145:14,20 146:6,7 146:8 147:21 43 54:20 44 53:10 54:20 44114 209:2 45 48:11 50:21 82:3 47 36:5,15 43:20 43:22 198:8,12,14 492-7000 2:10 492-7077 2:11 4:01 180:23,25 4:12 180:25 181:4 5 5 3:3 43:5 110:15 115:4,8,9 116:16 116:18 140:22 5.0 118:11 119:5 5.0. 120:23 500 8:20 500,000 191:16,19 51 74:12 52 75:23 522 3:7 4:9 9:17 523 3:8 91:7,9 524 3:9 91:18 102:17,19 104:3 107:17,19 108:19 108:24 110:15 525 3:10 102:19 103:6,10 104:3,18 106:20 108:24 109:3,11	526 3:12 140:20 53 128:3 55402 2:4,10 5:4 56 120:24 58 128:3 6 6 43:6 94:7,7,12 103:20 115:13,13 119:20 181:2 6.0. 118:23 6.6 197:21 6.7 197:20 6.8 171:19 6/28/2019 209:8 210:3 211:3 60 158:10 159:1 170:17 61 162:5 612 2:4,5,10,11 7 7 43:7 121:9 7.1 131:19,20 132:5,11,14,18 7.2 135:20,23,25 135:25 136:13 137:17 138:6 139:20 141:1,14 141:21 7.2. 138:5 139:12 141:4 71 170:13,13 8 8 43:8 116:1,10 117:13 118:10 121:11,13,14,22 121:23 138:1 8.0 118:7 8.1 121:23 122:2,7 122:14 125:14 128:4 129:2	8.1. 121:25 8.2 121:23 131:7 131:18,19 132:5,9 132:15,24 134:7 134:11 135:7,17 8.2. 131:5 8.3 135:20,23,24 135:25 140:3 144:12 8.3. 136:19 140:5 144:11 8.4 145:11 147:19 8.4. 145:8 80 2:3 4:4 5:2 800 8:20 82 112:17,19,19 84 120:16 9 9 43:9 209:4 91 3:8 94 199:16 9:07 4:5 9:08 4:11 a a.m. 4:5,11 43:10 43:12,12,16 82:7,9 82:9,13 ability 56:22 59:7 59:9,17 able 35:2 39:15 59:15 62:22 135:3 180:8 188:3 192:8 206:19 absolute 89:7 absolutely 55:23 99:8 abstract 94:19 absurd 165:11 accept 9:22 24:3 105:1 134:1
---	---	--	---

[accept - allocate]

Page 3

153:10 accepting 47:8 access 107:16 108:3,5 150:19 197:18 accomplish 156:9 185:11,12 account 16:21 49:16 87:13 135:5 154:11 accountant 79:21 accounting 71:14 78:3,20 79:18 80:16,24 81:18 accrue 126:17 accumulated 67:3 accurate 33:19 48:21,25 93:8 122:4 148:4 accusations 111:18 112:13,16 accuse 89:1 101:2 accused 47:22 48:8 95:10 111:17 112:11 136:4,14 149:25 185:11 198:20 202:10 accusing 100:17 100:18 126:9 ace 1:9 54:25 58:19 59:3 125:6 125:10 achieve 186:9 187:18 195:21 acknowledge 210:11 211:16 acquired 7:23 act 210:14 211:20 action 5:10 208:10 208:11	activities 176:16 176:16 202:12 activity 53:12 129:14,15 130:8 145:4 acts 172:19 actual 10:7,9,12 16:22 25:1,4,12,13 28:13,18 29:21 73:7,21 115:10 127:6 163:12,19 165:6 166:19 175:17 195:10 actuality 128:21 adapt 139:17,17 139:19 add 45:21 117:5 added 200:3 adding 28:4,5 158:23 170:2 addition 54:4 additional 94:4,25 186:14,23 191:4,8 191:9 195:16 196:2,7 address 63:19 110:16 203:4 209:15 addressed 166:11 addressing 66:5 66:18 adequately 154:22 adjourned 207:20 adjust 48:21,22 adjustment 50:18 adjustments 27:25 28:4,12 29:15,16 29:20 50:19 87:14 157:19 administer 5:9	administration 66:24 administrative 129:5,8 admitting 170:5 adopt 147:19 adopted 144:15 adopting 148:5 advisor 30:12,20 32:24 33:6 34:11 35:10,18,22 41:25 44:8 45:20 48:14 48:16 49:6,19,23 50:10,22 51:5,12 51:15,21 52:1,4,19 53:2 69:16,17 70:3 71:11,25 92:16 93:2,15 95:14,15,18 96:2,5 96:7,16,23 97:4,9 97:10,14,24 98:7 98:15,24 100:4 108:17 111:19 112:12 123:19,23 124:21,23 134:10 143:9,19 145:23 146:1 154:2,13 173:18,18 175:1,8 176:1,7 179:11,17 179:18,19 186:10 186:20 187:20,23 188:10,11 189:10 189:23 191:18,21 202:18 203:13 204:22 206:6 advisor's 173:22 affect 63:2 161:8 affirmative 22:9 25:13 30:9 46:18 174:25	affirmatively 34:9 affixed 208:15 210:15 211:21 aggregated 122:8 agnostic 69:16 ago 8:25 52:12 186:22 192:12 agree 4:19 41:13 42:18 68:13 97:11 110:6,9 128:18 168:24 177:6 178:23 198:24 agreed 116:4 157:13 193:6,10 agreement 47:23 167:13 171:5,20 172:4,5 192:20 agreements 155:1 155:5,8,13,15 156:22 157:7 158:14,15 160:23 161:6,13 172:5,8 172:14 196:5,7 ahead 22:21 61:17 115:15,16 al 4:24 albeit 143:17,21 180:3 aligned 78:1,1 alissa 205:3 allegations 11:16 14:25 45:23 47:1 47:2 48:20 100:21 119:18,24 143:8 143:24 184:5 alleged 17:24 18:13 24:13 27:20 163:9 195:11 allocate 129:11,16 132:23 144:25 145:1,4
--	---	--	--

allocated 123:5 124:2 129:22,25 130:2,7,7 131:24 138:4 144:20 allocates 129:7 allocation 130:10 145:5 allocations 127:16 129:13,19 130:11 130:14 allowed 75:5,24 alter 78:10 80:19 alternative 49:21 161:18 186:3 189:18 alternatives 31:12 155:23 156:5 174:19 179:18,19 183:19,25 185:6 amended 26:23 amendment 162:21,22 america 7:20 121:21 128:6 american 1:9 8:10 8:16,19 amount 25:4 46:8 46:19 90:12,16,16 105:25 107:8 129:20 160:12 162:17 171:23 173:5 175:17 183:14 184:14 186:17 197:14 amounts 17:13 141:14 163:8 167:3,6,7 amsterdam 7:25 analyses 14:22 51:2 80:19 169:15 175:2	analysis 12:24 21:13 23:14,17,24 25:20 26:3 30:23 31:20 32:5,8 47:11,20 48:12 49:1,8 80:3 85:22 86:24 87:4,14 94:4 106:8 130:19 137:21 152:11,25 160:25 161:4 168:15,20 175:12 179:10 183:11 185:2 195:7,14 199:5 analyst 152:9 168:13 180:2 201:22 analysts 149:7 analytics 72:16 analyze 152:17 162:2,10 196:6 analyzed 84:18 analyzing 110:1 149:21 152:3 anchor 198:12,18 annual 8:9,14 53:12 54:22 56:8 annually 191:19 answer 9:23 10:24 14:8,19 18:19,20 19:2,4,6,16,20 24:7,14 25:16 32:3 33:8 35:25 39:8 40:19 42:25 43:1 44:9,16 46:24 65:18 73:12 73:25 78:19 90:21 92:11 93:9 94:6 94:17 95:12 99:4 110:24 111:21 113:25 123:21	124:10 151:1,4 158:22 166:10 170:2 184:15 203:7 204:6,19 205:1 answered 14:1,6 154:15 169:21 200:18 answering 17:6 19:22,23 96:4 answers 3:8 50:25 80:9 83:21 91:17 111:4 133:5 184:8 anybody 35:21 37:2 41:25 152:18 anymore 156:1 anytime 64:4 163:11 apologize 131:13 131:15 141:9 appear 112:4 162:23 210:11 211:15 appearances 2:1 appearing 85:10 appears 9:23 16:7 16:15 112:5 136:25 appended 211:11 211:18 applicable 11:11 16:6 23:11 105:19 132:3 136:5 159:6 191:17 application 23:21 23:23 32:8 36:2 36:21,24 37:8,9,10 37:14 71:2 81:9 97:3 98:22 112:11 136:8 158:20,21 170:15,21 171:11	171:24 applications 24:10 24:17 28:6 35:17 35:19,22 39:6 41:1,12,17,20,24 42:8,19,22,23 43:22,24 47:22 48:8,13,15 49:6,19 49:22 50:10,21 51:5,11 70:11,21 70:25 71:7,10,15 71:24 81:7,10 93:14,16 96:22 100:3 109:1 111:11 113:6 124:14,21 139:16 145:22 157:11 158:1 171:17,22 179:3 198:20 applied 118:12 134:24 136:8 138:16 143:20 150:23 158:25 applies 50:19 86:17 136:16 150:15 163:5 182:22 apply 15:1 47:8 60:11 78:13 80:2 88:5 102:12 136:4 137:23 159:7 160:2,13 applying 181:18 apportion 12:25 apportionment 12:22 31:23 85:2 approach 31:10 31:13,15 60:21,22 60:23,25 78:21 79:24 152:25 154:8,9 174:23
---	--	---	---

[approach - back]

Page 5

181:6,7,7 182:9 183:1,4,13 184:6 184:11,12 185:3 185:18 194:1,3,17 194:24 195:5,8 approached 18:8 approaches 45:5 184:12 appropriate 25:4 46:4,8 64:5 74:5 84:5 87:1,19,21,23 125:19 130:25 175:6,11 approximate 134:25 approximately 70:20 72:1 191:19 199:14 arbitrarily 95:11 area 6:15 16:18 179:4 areas 175:25 185:19 arm's 151:14 arp 97:6 arrangements 196:1 arrive 19:11 26:14 107:13 art 57:22 85:1 artificial 62:20 artificially 62:20 aside 77:10 80:8 80:10 asked 6:6,22 13:25 14:5 18:9,10 21:6 22:17 37:2 38:1 39:5 54:19 62:6 72:23 73:5 77:19 79:11 89:22,24 92:25 94:16	107:21 108:8,11 114:8 115:18 134:23 141:5 147:5 148:10 169:20 200:17 201:17 203:1 206:13 asking 15:9,16 16:10 18:23 34:14 45:13 77:2,2,18 79:9 90:4 115:23 139:13,14 151:18 aspect 18:5 143:18 202:20,22 aspects 42:17 57:13 69:12 176:15 187:11 assess 6:8 22:11 31:9 64:4 77:19 177:9,18 182:14 assessing 176:7 assessment 30:5 74:16 77:22 176:2 176:9 asset 17:3 153:19 163:12 173:15 174:2,5 175:14 176:6 181:22 182:11,15 194:6 assets 6:16 66:9 67:4 assignment 210:2 211:2 212:2 assignments 9:2 assistance 195:16 196:8 assistant 199:23 associated 113:4 123:2 126:13 128:12 132:22 135:2 176:17	192:1,5 202:12 assume 27:15,17 169:6 170:3 assumed 48:2 147:24 151:19 154:4 assuming 16:6 34:13,22 35:1 50:2 117:1,2 119:7 152:18 assumption 6:9 12:10 13:5 21:15 21:22 27:17,19 46:10 48:6 50:5 50:20 84:2 98:13 118:14 154:9 157:16 160:10,12 assumptions 10:21 11:7,11 13:20 23:10 27:1 48:1 49:5,7 75:15,16 99:20 109:5,7,14 109:16 134:24 144:1 157:17 attached 211:7 attempt 73:20 attempted 93:24 attend 201:4 attended 201:8 attending 201:7 attention 162:16 163:4 attorney 208:9,11 attributable 12:8 12:12 13:6 14:11 15:20,21,24 16:15 16:20,23 21:11,17 31:20 32:6 56:19 57:5 58:5,8,11,16 58:22 59:9,17 60:3,13 61:12,16	61:20,23 62:2,15 63:6,9,17 64:11 68:18,24 69:4 70:24 71:6 72:21 72:25 87:22 96:6 165:10 attribute 57:14,16 attributed 57:19 57:20 58:4,6 attributes 31:11 31:16 33:2 56:4,5 audio 4:18,18 audit 148:1 australia 100:9 131:7,9 134:8,10 authenticate 103:1 authorize 211:11 authorized 5:8 automate 187:2 188:3 automated 81:3,4 automation 187:3 available 31:4 60:24 85:18 126:11,25 136:10 155:23 187:8 ave 209:1 average 137:6 averages 128:24 award 7:11 29:2 83:11 aware 101:24 135:8 164:14
b			
b 3:5 111:25 back 9:24 35:17 43:13 82:10 83:8 100:20 101:13 109:23 114:24 116:16 118:6,23 132:11,18 138:4			

[back - breach]

Page 6

140:21 141:1 143:13 150:11 167:4 168:20 181:1 203:20 209:15 backdrop 154:23 177:7 background 155:2 203:12 204:7,20 206:20 207:11 bad 68:5 bakewell 1:16 3:7 4:3,22 5:21 6:2 22:16 37:5 43:15 43:18 51:10 82:12 87:12 102:23 103:8 104:18 109:11 115:1,4 140:23 141:1 181:3 207:18 209:8 210:4,9 211:4,13 212:20 bakewell's 141:5,8 balance 147:15 base 83:11 based 7:11 17:10 18:11 37:21 38:17 38:19,20 45:25 48:23 79:24 109:3 128:4 129:14,15 129:22 130:8 138:7 145:4 158:20,21 159:2 161:12 164:5,25 165:24 173:22 174:11,12,16 baseline 91:15 basic 49:12 86:7 basically 31:25 66:25 77:13 122:9 126:9 132:3	156:10 basis 74:14,20 75:2,3,6,22 76:6 76:14,16,18 77:4,6 81:3 129:14,15 130:3 179:21 bates 105:4 bearing 166:15,17 177:17 178:4 beginning 16:3 43:14 44:5 82:11 82:14 105:19 114:25 140:22 158:17 181:2 182:4 194:13 behalf 195:16 behave 86:23,25 87:19 88:13 124:5 126:19 130:9 145:19 149:18 behaved 85:23 138:4 behaves 130:10 behavior 80:24 81:15 130:12,14 belief 139:18 167:25 beliefs 169:17 believe 17:11,12 22:11 26:11 34:9 49:18 55:11 57:13 58:3 74:7 99:13 125:18 146:7 161:5 164:23 165:23 168:24 175:6 183:1,13 184:12 believes 143:16 belongs 50:16 benefited 157:24	best 31:19 45:6 61:2 92:19 126:8 126:25 134:4 136:10 137:25 146:3 206:19 better 39:19 68:10 155:17 161:3 182:2 187:1,2 188:6,7 193:4,12 beyond 64:8 196:2 big 60:18 62:10 153:9 174:21 bigger 131:16 166:5 biggest 7:20 119:15,16 bilateral 178:10 178:19 billion 8:22 94:9 116:23 117:10,10 bin 60:21 bins 60:19,24 bit 8:7 33:11 39:12 102:21 126:2 131:16 155:17 162:7 168:5,18 176:24 199:18 205:10 206:25 blank 69:18 blaze 30:12,20 32:24 33:6 34:11 35:10,18,22 40:13 41:25 44:8 45:20 45:22 48:13,16 49:6,19,23 50:10 50:22 51:5,11,14 51:21 52:1,4,18 53:1 69:16,17 70:3 71:11,25 92:16 93:2,14 94:15,18 95:13,15	95:17 96:1,5,6,16 96:23 97:3,9,10,13 97:24 98:7,14,23 100:4 103:15,20 103:23 104:4,23 108:16 111:19 112:12 123:19,22 124:21,23 126:21 134:9 143:9,19 145:22 146:1 154:2,13 173:18 173:18,22 175:1,8 176:1,7 179:10,17 179:18,19 183:7,8 186:10,20 187:20 187:22 188:10,11 189:10,23 191:18 191:20 202:18 203:12 204:22 206:5 boat 47:16 boil 13:21 44:3 boils 151:10 booking 139:8,16 bookings 113:7 bothered 165:19 bottom 116:22 boundaries 17:1,2 18:3 20:12 31:5 32:19 brand 38:12 56:22 58:1,4,10,11,17,22 59:1 branding 58:24 brands 58:20,23 breach 9:12 10:1,3 22:1,6,12 23:19,24 48:9 149:20 154:5 163:10,16,17,19 166:19 167:12,25 168:24 169:19
---	---	---	--

[breach - case]

Page 7

175:7 176:13,18 183:3 breached 195:11 breaching 47:23 break 40:21 43:7 43:11 81:21,22 82:3,8 83:5 112:18 114:18,22 140:9,13,17 180:19,24 briefly 160:20 bright 15:11 bring 6:17 150:25 162:15 bringing 163:4 165:17 broad 67:19 68:3 88:1 151:9 broader 81:5,8 161:8 broadly 54:17 63:11 broker 65:11 brokers 64:21 brought 90:7 169:17 bucket 57:3 buckets 129:3 174:21 181:15 building 188:14 bulk 127:11,14 bullet 188:13 bunch 28:11 37:25 67:4 68:7 78:12 169:2 202:9 burden 9:13 10:5 10:5,18 11:13,14 11:14,20 12:1,2,11 13:4,5 21:16 burdens 9:9,25 11:1,18	burdensome 147:8 147:14 business 7:23,25 38:8,9,12,13,14,23 39:1,14 40:7,9,9 40:12,14,14 41:2 41:13,14,15,16,20 42:1,7,10,11,12,13 42:17,18,21,22 44:13 47:19,20 54:24 56:7,10,24 57:14 59:3,19,25 60:8 61:9,10,12,13 61:14,20 64:4 65:4 66:3 69:16 71:19 72:15 73:3 74:12 75:1 78:6 79:18 80:4,7,16,17 80:21,22 81:2,11 81:13 89:4 90:24 91:1 97:18,18,20 97:21 98:2,12 100:6 109:20 111:15 114:16 120:22 121:6 123:4,6,11,23 124:3,16,17 125:17 126:9,13 127:7,8,20 129:12 129:17 130:12,14 130:20,23 131:23 136:1,11 137:4,7 137:24 138:2 139:3 141:17 142:6,16,18 143:12,19,21,22 144:6,21,22 145:3 145:18 146:2,9,13 146:15,18,22,25 157:23 159:20 164:10 167:1	179:24 187:6,10 188:9 189:2,17 192:17 193:5 195:2 202:21,22 203:12 204:21 206:5,10,11 207:2 businesses 7:2 54:2,3,21 62:17 68:8 71:16 92:14 121:16 123:2,6 124:5 129:22 135:13 136:2 144:24 149:16 156:15 195:25 buy 150:22 byron 2:9	60:20 91:3 97:13 188:23 189:14 201:23 202:4,5 203:1 204:1 206:2 206:3,21 207:5 called 9:1 94:18 103:14 188:13,14 188:24 201:9 calling 89:15 calls 10:15 11:4 12:15 13:9 14:14 15:6,25 21:19 73:9,22 76:21 167:15 168:3 202:25 204:7 canada 100:9 121:20 125:2 145:8 captured 113:5 114:10 capturing 28:11 care 116:19 career 7:5 9:3 careful 77:24 cascading 24:24 case 1:4 6:6,12,20 11:16,22 18:8 20:15 24:6 32:16 32:24 45:23 46:9 46:20 47:2,3 50:11 62:21 71:11 83:13 88:24 112:11 119:18 122:2 123:3 125:19 126:11 130:13 143:24 151:7 152:2 155:5 156:11 160:13 161:1,6 175:6 176:8,23 182:23 183:1,15 184:5
		c	
		c 4:1 111:25 ca 188:18 189:1,8 209:25 calculate 93:22 125:14 133:6 140:4,7 141:13 144:11 156:20 157:5 161:11 163:3 171:23 calculated 118:6 120:13 127:3 133:2 137:18 139:14 calculating 160:2 calculation 25:12 25:13 calculations 29:23 115:8 117:18,23 122:7 134:6 135:6 138:10 147:23 156:24 166:1 175:3,4 call 7:24 24:1 31:10,12,15,23	

[case - clearly]

Page 8

185:2 194:2 195:7 195:22 197:8 198:21 209:6 210:3 211:3 cases 176:20 183:22 200:3 202:14 casualty 54:18 64:18,19 categories 35:11 60:10 86:1 88:11 107:9 109:12 111:13,14 126:14 categorization 149:18 203:11 categorizations 124:9 categorize 111:12 140:7 categorized 112:7 194:23 categorizing 171:24 category 35:9 44:25 60:11 109:6 109:9,9 204:25 205:7 caught 12:1 cause 208:7 causing 139:23 cellphones 4:16 cellular 4:15 centuries 65:23 century 42:15 44:13 certain 35:19 48:25 50:10 59:22 76:13 83:2 90:10 123:9 150:6,17 182:16 201:18,18	certainly 69:7 73:1 76:5 78:18 126:14 160:16 175:2,12 178:8 certainty 93:9 certificate 211:11 certification 210:1 211:1 certified 7:10 208:5 certify 208:6,7,9 cetera 111:25 cfo 7:2,17,18 challenges 114:13 challenging 25:16 47:11 change 45:20 119:1 128:8 130:5 150:18 209:13,14 211:8 212:3 changed 188:9 changes 61:6 144:3 194:10 209:12 210:7 211:7,9 changing 198:5 characterization 43:1 characterizations 162:25 characterize 111:1 170:24 characterized 83:23 122:10 202:23 characterizing 172:16 charge 197:22 charged 199:10 208:13,13	charges 120:11 chart 82:22 99:1 148:19 charts 38:24 40:12 40:16,17 52:9,15 72:12 97:20,21 98:3,4 202:23 206:7,10 chase 113:14 207:3 check 105:22 109:20,23 118:17 125:8 136:11 148:2 149:11 170:23 checklist 151:20 choice 151:19 choose 151:20 chose 74:24 chris 1:16 4:3,22 5:21 40:5 43:15 82:12 115:1 140:23 181:3 207:18 209:8 210:4,9 211:4,13 212:20 chubb 54:22 58:19 58:23 59:2 125:9 128:4 148:21,23 149:12 chubb's 54:24 58:25 149:15 circle 150:25 circular 63:20 circumstances 68:3,5 156:19 176:22 182:22 circumstantial 33:24 citation 115:24	cite 16:5 37:21 114:6 122:16 139:11,20 197:20 207:12 cited 16:18 38:21 69:15 83:6 144:13 144:14 148:20 189:19 192:11 204:16 205:17 cites 54:19 citing 23:8 139:23 civil 210:5 211:5 claim 23:24 33:5 45:25 48:3 153:21 153:22 157:1,24 163:16,17 164:18 165:4,6,12 176:5 182:11,16 claimed 48:5 164:10 claiming 26:14 153:14 claims 20:14 50:4 76:9 159:9 163:18 165:8 166:16 176:8 179:22 185:12,15 clarify 34:12 117:17 clarifying 21:3 claudio 207:8,9 cleanup 198:10 clear 19:3 23:12 36:6 43:19 75:8 76:3 90:23 95:2 99:16 116:15 178:22 clearly 26:8 28:21 75:17 108:5 110:24
---	--	--	---

[cleveland - confirm]

Page 9

cleveland 209:2 client 153:10 162:17,23 164:9 client's 163:2 close 43:18 77:15 143:21 160:20 169:15 closely 20:21 closer 123:10 187:22 code 16:5,5 coding 187:13,14 187:20 coextensive 27:24 32:14 coffee 81:25 coincidental 134:15 collectively 69:10 70:25 collects 130:22 college 81:13 colleges 81:12 color 65:18 71:20 column 111:23,25 112:1,2,2,2,9,9 columns 105:12 105:16,18 111:24 combination 120:7 194:12 combinations 50:13 combine 76:19 77:6 83:23 combined 77:13 77:21 120:15,16 121:7 148:16 156:15 combining 53:6 75:6 76:16 79:17	come 40:20 52:3 62:6 67:6 77:15 78:11 82:25 83:1 86:5 91:1 94:14 94:22 117:12 122:14 153:18 172:11 176:19 183:22 comes 38:21 42:11 56:6,8,9 64:15 77:23 108:22 117:13 118:3 123:9,15 125:16 127:6,8,19 131:11 146:19 160:18 coming 83:5 151:13 commencing 4:5 commensurate 154:7 commercial 128:5 201:22 203:18 commission 210:19 211:25 212:25 commissions 129:5 commit 196:13 committed 57:9 commoditization 156:6 commoditized 158:2 companies 61:4 62:18,21 95:17 125:6,7 128:14 148:16,18 149:2,8 155:25 156:15 161:18,19 164:18 180:7 196:13,16	company 1:9,9 7:1 7:13,14,15 8:14,17 9:1,2 26:23 59:22 63:1 67:21 99:5 100:24 105:23 123:10 128:22 129:16 130:21 209:6 210:3 211:3 company's 156:7 comparable 180:10 compare 32:19 111:15 112:6 124:22 compared 127:23 132:6 182:4 comparison 132:5 comparisons 21:7 61:4 110:22 117:25 compartment 62:12,12 63:15 compartments 62:10 competition 185:23 competitors 180:9 180:9 compiled 99:11,17 compiling 68:7 complaint 26:22 26:24,25 complete 78:19 148:1 completed 190:12 209:15 complex 44:14 complicated 97:22 98:4 complying 153:8	components 120:17 compound 126:3 comprise 54:2 compulsion 150:21 computer 81:9,10 103:9 104:12 105:10 computing 16:22 conceding 47:14 47:14 conceivably 30:25 32:14 33:2 concept 97:24 98:14 150:15 151:6 175:9 concepts 180:4,5 conceptually 27:20 30:2 85:2 176:21 188:15 concern 80:10 concerned 135:9 concerning 208:7 concerns 78:25 concessions 49:13 concise 44:16 conclude 35:14 conclusion 10:16 11:4 12:15 13:10 14:15 15:7 16:1 19:12 21:20 73:10 73:23 76:22 77:2 155:4 conclusions 67:7 conduct 72:17,19 conducting 31:19 32:5 confirm 34:7 51:4 51:11 103:13 104:1 148:7
--	---	--	---

[confirm - correct]

Page 10

160:15 161:3 171:10 189:9 confirmed 31:8 114:11 confirming 136:6 confused 169:10 connect 20:13 connection 14:25 15:4,18 17:21 20:9,10 26:16 30:12,17,20 32:23 33:1,5,10,13 34:7 34:10 35:4,8,10,15 39:21 41:11 44:24 84:20 90:5 93:1 93:14 123:13 176:4 184:4,19 193:24 connections 21:7 consensus 148:25 consider 34:21 100:21 152:15 153:11 154:20 170:8 175:13 178:16,18,20 179:1 181:19 182:18,18 consideration 63:3 85:17 158:10 160:22 175:3 178:8 considerations 31:14 64:2 161:8 180:1 considered 101:1 101:11,12 117:21 131:4 134:3 169:25 179:14 183:2,14 184:13 197:10	considering 178:9 185:20 consistent 59:24 108:12 122:11 149:13 160:17 186:4 197:8 consistently 143:10 149:3 constrained 125:25 consultant 7:5 8:24 9:4 consulting 7:8 158:3 197:14,22 contain 22:10 30:10 35:22 49:20 71:10 96:23 174:25 188:25 189:7 contained 105:16 contains 97:3 context 7:7 14:12 14:16,21 15:10,21 15:24 16:17 20:5 32:9 34:18 36:1 44:2 47:7 71:22 75:22 76:11 83:21 85:9 90:9 92:23 94:1 95:1 101:1 101:11,12,13 102:13 134:4 149:15 154:23 155:2,16,20 156:25 160:25 161:7 163:18,23 163:25 166:21,22 167:7 168:6 172:6 174:24 176:13 188:1 191:14 197:10,11,12	contexts 172:10 continue 4:19 contract 9:12 10:1 10:4 22:1,6,12 23:20,24 27:23 48:9 59:24 119:19 149:21 163:10,16 163:17,19 166:19 167:25 168:25 169:19 175:7,14 175:15 176:14,15 176:17 178:12 183:3 contracts 195:10 contractual 176:5 contribute 39:7,10 42:2,19,21 43:25 contributes 36:23 37:6,14 38:16 55:22 56:5 control 66:24 controller 7:19,22 8:10 conversation 38:17 69:20 198:18 conversations 4:15 113:16 convey 187:4 copies 111:16 208:13,14 copy 9:16,17,20 91:10 131:16 copyright 10:8,25 11:2 12:8,12 13:7 14:13,21 15:22 17:14,22 25:1,14 25:24,25 26:12,18 28:13,19 29:21 30:3,6,9 32:16 46:9,19 83:10	154:5 163:11,20 163:20,24 166:20 166:22 168:1,25 183:12,16,19 184:19 copyrighted 16:24 27:3,23 31:21 32:6 copyrights 25:18 26:4,15,16 27:5,10 27:19 28:17 29:6 29:8 32:13,14,21 47:23 166:24 corporation 1:6,6 1:9,10 4:24 7:19 8:21 209:6 210:3 211:3 correct 6:19 8:11 9:21 13:4,22 17:16 21:14 22:5 27:4,18 28:1 30:6 30:13 34:16,17 35:19 41:19 47:9 51:12,13 53:15 55:4 69:21 70:13 70:21 72:3,5,6 74:17 77:5 85:8 85:14 93:2 96:18 96:23 97:4,7,9 101:25 107:14,17 108:3 110:8,12 111:8 113:9 116:20,21 118:5 118:14 119:25 121:2,8 125:3,7 128:19 129:11 130:10 131:7,8 137:13 138:7 139:7 147:24,25 154:21 160:14,23 166:12 169:7
---	---	--	---

[correct - data]

Page 11

170:18 172:7 174:7 186:24 187:15 189:24 196:3 198:21 corrected 107:11 107:11 correction 107:15 corrections 28:10 209:12 211:17 correctly 106:9 181:8 correlation 61:6 127:22 cost 31:1,12,13,15 33:2 45:4 47:16 60:22 85:4,8 87:21,24,24 88:15 123:2 124:8 125:19 134:16 174:22 179:7 181:6,20 182:9 183:1,4,13 184:6 185:3,18 186:19 186:23 190:17 191:14,19,20 194:11,12,25 208:12 costing 129:14,15 130:8 136:7,23 145:4 costs 11:18 12:4 47:7 84:1,3,6,15 84:21 85:1,12,13 85:17,23 86:1,12 86:14,19,23,25 87:1,19,19,22 88:3 88:5,22,24 89:2,4 89:6,8,8,10,12,14 89:15,16,16,19,23 120:21 121:5 123:5 124:2,5,18	125:22 126:5,6,8 126:12,19,22 128:7 129:17 131:24 132:3,16 132:18,19,21 134:12,16 136:3 136:17 137:23,25 138:3,16 140:7 144:25 145:2,2,19 145:25 149:18,18 186:14 189:3 190:14,21 191:4 counsel 4:22 5:12 82:16 103:8,17 208:9,11 count 199:18 counted 95:22 107:13 199:15,16 counting 95:24 106:16,21 109:19 110:16 115:11 116:19 138:14,22 138:25 139:1,6,18 country 54:4 counts 96:22 county 208:3 210:10 211:15 couple 16:7,18 51:19 116:8,12 157:9 202:25 205:25 course 56:10 85:20 92:21 114:16 123:4,6,11 123:14 124:3,6,7 124:16 125:17 127:8,20 131:23 132:1,16,23 134:13 136:18 137:24 138:3 139:3 143:11	144:21,22 145:18 146:2,8,13,15,18 146:22 147:7,9 159:24 164:10 190:25 195:1 206:11 court 1:1 4:25 5:6 78:14 80:12 84:22 90:9 210:7 courts 79:3 cover 26:19 175:15 coverage 62:19 covered 27:22 119:23 178:13 create 30:22 45:24 46:1,2 47:3 59:1 166:25 179:24 created 146:6 164:12 creates 30:24 179:6 credit 49:4 162:22 credited 49:3 criteria 108:9,11 142:22,23 critical 99:10 criticism 154:19 160:24 criticized 160:21 critique 100:12 critiquing 100:14 csi 36:3,7,23 37:6 37:13 38:15 39:8 72:2,7 96:20 97:6 97:12 109:1 113:7 139:7,15 customary 107:22 customer 53:13,18 54:7,10 55:2 57:1 68:22,24 159:18	172:18 customers 68:6 160:4 195:20 cutting 90:24 91:3 cuw 50:15 72:4,8 103:15 109:1 113:3 139:7,7,16 cv 1:4 199:15 d d 3:1 4:1 111:25 112:2,9 201:10,10 damages 6:8,14 7:7 9:10,12 10:2,4 10:8,9,12,21 11:12 14:22 15:23 16:22 18:11 22:12 23:24 25:1,4,4,12,12,13 28:13,19 29:2,21 30:3,6 45:25 46:2 46:4,8,14,19 49:21 74:16 75:12 118:19,21 149:20 152:1 156:20 157:6 161:12 163:17,19,20 166:15,18,19 168:19 175:7 183:3,12,17 185:2 195:7 data 45:8 47:5 70:1,2 95:23 99:11,13 102:2,4,8 105:14 106:2,9,12 106:14,20 107:16 108:2,7,14,20,21 110:1,18 111:5,6 113:3,6,23 114:9 115:8 117:22 119:13 122:10,22 123:3,18 125:2,11 128:2 131:10
---	--	--	--

[data - determine]

Page 12

132:5,24 133:3 136:7,23 137:10 138:18 146:10 156:11 date 4:12 105:20 150:11,17 190:7 197:16 199:7,11 209:8 210:3,9,19 211:3,13,25 212:20,25 dates 105:19,21 118:11 day 149:5 158:18 159:22 194:14 195:4 200:22 208:16 210:16 211:22 212:22 days 116:8 209:18 deal 79:6 138:22 138:25 139:2 151:14 dealt 139:6 dear 209:10 decades 42:14 decent 92:12 decided 188:22 decision 64:23 186:2 decisionpoint 97:1 97:12 98:21,23,25 109:1 decisions 39:13,20 185:25 187:7,9,12 declarations 34:23 deduct 11:19 84:1 84:3 85:13 125:19 135:16 deducted 50:12 87:25 89:10,16 deductible 87:22	deductions 84:5 85:5 deed 210:14 211:20 deemed 209:19 deep 64:25 deeply 202:21 default 68:22 defendant 13:8 defendant's 11:20 defendants 1:11 2:13 5:17 73:8,21 149:23 defer 80:14 127:16 189:12 deference 80:11 define 20:12 25:17 26:9 28:22 32:19 69:2 90:2 96:19 173:8 defined 12:25 27:11 28:16 29:6 definitely 53:25 78:24 definition 20:19 28:24 95:1 96:12 130:6 150:17 173:7,11 174:4 delaware 1:6 dell 155:24 156:13 157:12,21,22 159:17,17,20 160:22 161:5,13 172:4,18,18,19 173:3 demand 64:1 178:10 demands 123:24 demonstrate 126:25	demonstration 51:14,21 denial 170:4 department 81:15 81:16,17,17,18 209:22 departments 81:13 depending 174:7 depends 36:1 39:7 39:8 96:19 deploying 191:2 deployment 162:19 deponent 208:6 deposes 5:22 deposition 1:14 4:2,18,22 5:1 43:15 50:23 52:24 54:23 56:10 82:12 82:15 115:1 140:23 181:3 207:18,20 208:10 208:13 209:8,11 210:1,3 211:1,3 depositions 130:18 derive 124:24 156:23 166:3 derived 15:13,16 31:13 45:8 47:4 134:19,23 135:10 describe 20:6 30:1 31:6 38:24 54:24 86:2 99:9,24 109:21 120:14,15 127:5 148:4 149:4 166:24 171:18 181:16 184:22 193:10 described 26:22 31:25 33:3 35:13	39:13 44:12 52:12 52:14 59:5 62:9 85:24 86:1 88:12 95:20 99:15,19,20 106:17 108:15,17 120:14 122:8 125:24 130:1 146:4 148:25 152:17 182:3 191:7 describes 59:25 116:13 184:20 describing 23:6 86:18 110:21 description 87:4 96:11 111:13 132:7 descriptions 51:18 53:6 109:6,8,9,11 189:7 designation 7:9 designees 44:19 desire 179:21 despite 44:20 detail 9:15 14:8 19:14 99:24 111:22 147:9 201:16 detailed 13:15 51:20 115:12 121:19 147:1,5 details 72:13 145:17 determination 166:18 169:23 181:10 determine 89:11 120:21 121:5 174:15 175:10 180:10 182:10,15 195:14
---	---	---	---

determined 137:24 148:22,24 149:21 175:18 177:1 determining 17:1 122:6 183:2 184:13 develop 161:19 179:3,18 188:23 developed 42:14 52:8,10 65:24 developing 120:20 153:25 193:4 development 189:22 deviate 161:21 deviating 24:21 deviation 161:24 diagrams 53:8 73:4 193:19 206:10 difference 120:8 120:10 differences 193:9 different 14:12 15:16 18:21 24:5 33:11 37:12 39:6 41:18 42:10 51:22 56:19 57:5,23 60:9 61:5 64:20 65:8,8,20 70:11,20 71:4 72:1,4,16,18 77:7 88:17,19 90:21 96:20 101:24 105:5,21 111:10 128:21 129:2 132:12 154:10 156:9 160:3 162:20 166:15 167:14 174:6,9,24 180:3	180:17,17 185:23 198:2,6,19 205:10 difficult 19:1,3 160:7 difficulty 96:4 dinner 151:21 direct 23:4 33:25 34:25 35:3,9,11 86:19 88:15,24 89:8 127:11,13,15 direction 143:23 175:5 184:3 187:24 188:3,23 directionality 128:1 directionally 120:10 directly 19:23 99:4,18 129:12,21 director 66:23 disaggregate 26:2 disagree 21:24 22:2 131:2 165:18 disagreed 133:16 134:2 144:1,2 disagreement 169:5 disappear 67:13 discipline 78:6 disciplines 79:17 80:15,17 disclosed 143:25 discount 28:5 158:8,25,25 159:6 159:14 160:2,7,12 161:10 discounting 178:7 discounts 153:13 158:6 159:5 160:3 170:16 180:13,14 195:21	discovery 48:18 48:24 50:8 83:15 107:20 205:22 discrepancy 139:23 discuss 44:14 86:19 103:2 110:2 117:25 120:17 142:3 157:20 159:22 162:4 170:14,25 171:4 171:11 184:16 185:4,6 194:18 197:25 discussed 44:18,22 45:3,8 54:14 55:18 102:12 114:11,12 115:12 125:24 131:23 137:21 144:24 145:16 146:4 162:22 170:15 171:1 176:24 183:25 184:1 185:19 186:21 189:20 193:20 194:4 202:20,23 discussing 98:12 171:21 172:10 discussion 44:3,5 85:11 169:8 170:5 198:1 discussions 36:19 110:3 143:13 167:6 168:23 202:15 disgorge 73:20 disgorgement 10:10,25 11:2 14:13,21 17:9,14 17:22 18:11 25:2	30:3,6,10 45:25 46:4,9,20 83:10 163:21,24 165:11 166:20,23 183:14 183:24 184:14 disproves 34:3 dispute 156:17 172:6 190:23 disregarded 14:8 disregarding 153:12 distinguished 27:6 distinguishing 10:9 distribution 57:1 68:15,19 district 1:1,2 4:25 4:25 dive 64:25 dividends 129:6 doable 132:1 doctor 24:15 35:6 44:22 160:9 199:1 199:4 document 57:10 91:12,23 94:14,18 94:19,20 95:20 105:3 122:17 123:5 125:16 131:12 135:17 138:13 140:6 144:13,14 170:23 199:19,22 documentation 163:2 documented 51:1 documents 38:21 53:7 54:24 56:9 59:5 133:13 166:7 166:7 168:5 170:24 172:16
---	--	---	--

193:15,23 205:20 206:6 doing 31:2,22 47:9 49:25 50:1 52:1 59:14 60:15 61:8 62:7 63:13 67:5 78:10 85:16 86:24 100:18 101:3 107:25 131:20 134:11 140:9 147:25 149:25 164:20 165:12 166:4 178:22 186:10 196:14,19 196:20 198:10 dollar 46:14 127:24,25 128:16 167:3,6,7 197:20 dollars 8:20 92:1 142:17 171:19 domain 126:12 double 91:21 106:16,21 109:19 109:23 110:16 115:11 116:19 138:14,22,25 139:1,6,18 draw 64:16 80:20 drinking 81:24 drive 3:9 38:4 39:7 42:2,9,17 54:7,10 55:3 103:9 104:10 104:14 driven 44:8 53:13 92:15 96:3 118:22 119:14 202:16,17 drives 37:14 38:11 drools 188:24 189:18 191:15,20 191:24,25 192:1,2 192:15,18,20	drove 35:22 dts 1:4 due 29:12 39:4 47:6 77:16 87:5,5 165:16 duly 5:22 duplicative 111:6 e e 2:5,11 3:1,5 4:1,1 112:2,9 201:10 earlier 32:13 39:5 44:13,18 45:3 53:16 69:8 86:22 89:19 103:24 114:12 115:12,13 115:18 137:21 138:15 146:4 152:17 158:17 168:16 171:14 172:24 194:13,20 early 207:1 earned 117:14 134:18 135:1,1 easier 57:23 easy 50:17 57:21 economic 17:2 18:7 20:2,12,18,19 20:25 24:18 29:8 29:13 30:23 31:5 31:16 64:3 78:2 84:16 86:3 165:15 171:15 175:13,20 176:15,16 185:14 economically 24:22 27:12,14 28:17 32:17 77:12 77:20 78:22 79:13 79:15,19 164:21 economics 12:21 20:21 21:4 78:1 80:24 81:17	economist 79:13 180:2 181:13 effect 24:24 effectively 74:14 efficient 99:3 186:6,12 187:22 efficiently 101:19 effort 58:24 92:20 ego 78:10 80:19 eight 7:1,13 eighth 2:3 4:4 5:2 either 8:7 12:4 29:10 47:18 84:13 117:4 163:10 184:7 205:6,17 elasticity 64:1 elect 48:23 element 12:5 73:1 elements 12:7,11 13:6 16:23 31:1 57:5 eliminate 106:16 106:21 112:5 115:11 eliminating 109:18,19 ellen 201:20,22 email 209:17 embracing 175:20 emotion 153:23 employed 208:9 208:11 employee 113:15 208:10 employees 36:20 38:17 employment 191:9 employs 70:12 enable 41:2 enclosed 209:11	endeavor 47:19 108:1 ends 118:18,21 energy 7:24 engagements 199:16 engages 195:20 entail 79:15 entered 178:13 211:9 enterprise 7:4 8:3 23:20 24:10 158:15 164:14,24 165:22,23 170:16 entire 8:16 32:15 210:5 211:5 entirely 48:20 93:3,7 entirety 27:22 126:9 entities 74:8,15,20 77:7,20 121:20 entitled 73:7 83:25 84:3 154:12 entity 112:8 equals 117:9 err 96:9,9 errata 209:13,18 211:7,10,18 212:1 error 24:25 126:3 errors 24:21 28:1 87:6 especially 92:12 esq 209:5 essentially 117:5 established 54:3 estimate 126:12 126:24 128:23 132:2 136:3,10,16 137:22,22,25 145:25 146:3
---	--	--	---

159:6 200:23 202:2 estimated 132:14 162:20 estimates 96:9 117:22 124:22 127:7 132:15,17 158:9 estimation 71:3 et 4:24 111:25 eu 100:10 138:18 139:17 europe 135:20,25 136:2,5,9,11,15 european 136:2 event 11:23 evidence 27:13 30:16,23 34:25 35:3,9,12 48:24 49:2,9 50:7 76:7 76:10 130:13,18 160:17 174:12,17 178:23 194:10 197:7 exactly 7:22 107:4 117:21 171:12 examination 3:3 5:25 example 31:2 40:3 50:14 52:13 69:25 70:5 81:1,4 86:20 98:22 99:7,9 100:5 128:6 examples 56:11 59:20 90:1 100:1 155:19 156:12 157:8 158:13 161:8,14 185:13 195:12 excel 69:18 106:22 111:24	exception 101:5 exceptions 159:16 exchange 178:10 exciting 135:21 excuse 190:15 executed 211:10 execution 210:14 211:19 exhaustive 56:12 70:7 exhibit 3:7,8,9,10 3:12,16,17,19,21 3:23 4:9 9:17 29:24,25 49:20 50:14 91:7,9,17 94:7,7,12 102:17 102:19 103:6,10 103:20 104:2,3,18 106:20 107:17,19 108:19,24 110:15 115:4,8,9,12,13 116:1,10,16,18 117:14 118:7,10 118:11,23 119:5 119:20 120:23 121:9,12,14 122:1 122:3,6,7,9,13,14 122:24 123:7 124:10,12,20 125:2,14 127:2,4 128:4 129:25 131:3,5,13,19,19 134:7 135:6,17,23 136:20 137:17 138:5,6,11,13 139:11,20 140:3,5 140:20 141:1,14 144:14,16,19 145:10,11,12,20 146:6,7,8 147:18 147:21 148:10,14	149:9 155:12,13 157:9 158:15 160:4 171:9 195:13 196:6 197:15 exhibits 3:14 9:21 29:17 110:15 117:13 118:4 121:20,22 122:12 134:16 138:2 147:3 157:19 exist 86:14 100:25 107:6 existing 53:14,19 54:7,10 55:2 expect 130:21 158:4 179:12 193:22 expected 128:11 190:12 expects 59:1 expense 85:8 140:8 145:2 146:24 148:15 149:19 expenses 120:25 121:1 125:12 129:1,3,4,9,24 130:2,4 133:5,6,12 135:15,16 140:4 144:16,18 147:2 147:18,20 experience 7:11 7:13 8:23 15:23 16:11 48:18 58:20 59:20 62:25 64:16 71:19 78:5,7 80:20 107:21 160:17 169:24 186:13 196:12 197:7,8	expert 1:14 4:3 6:13,15,18,25 10:21 11:13 15:23 51:13 52:20 60:17 64:3 75:12,12 79:6 87:11,14 113:10,11 152:10 160:11 168:14,19 168:19 174:22 179:13 180:1 194:21 200:6 expertise 6:11,20 6:21,23 56:24 60:2,3,14 175:25 181:16 experts 19:14 21:6 34:24 44:18 48:23 165:18 expiration 210:19 211:25 212:25 expiring 119:19 explain 13:20 19:9 19:10 24:16 44:10 88:21 115:7 123:22 131:20 135:22 explained 13:15 30:17 54:22 192:23 explaining 92:12 110:11 explanation 142:2 exploratory 202:15 203:2,25 express 36:3,7,23 37:6,14 38:15 39:8 44:6 72:2,8 96:20 97:6,12 109:1 113:7 139:7 139:15 166:3
---	---	--	--

[expressly - figuring]

Page 16

expressly 18:2	faith 169:5	169:16 170:14	159:21 162:16,23
extends 139:19	falls 13:7 44:24	171:4 173:19	164:3,14,23 165:4
extent 10:15 11:3	203:10 204:25	177:3,24 179:9,16	165:23 167:14,24
12:14 13:9 14:14	familiar 105:1	186:6,8,13,18	170:14 171:3
15:6,25 75:4	113:24	187:18 188:20,22	172:10,19,20,25
76:21 98:18	far 29:15	190:2,3 191:4	173:3,23,24 177:4
100:18 129:12	faulting 107:24	192:14,17 199:11	177:10,17,19,23
190:20 202:13	fax 2:5,11	201:10 209:6	178:6,8,15,20
extra 186:19	features 189:9	210:3 211:3	179:9,22 180:7,9
extract 103:15,20	fed 3:11,18,20,22	federal's 30:11	180:11 190:23
103:23 104:4,24	3:24 52:14 122:3	44:7 53:17 54:6,9	191:1 195:20
eyes 34:1	129:18 131:11	55:12,20,21 57:4	196:23 197:16,21
ezer 139:17,17,19	133:9 135:6	57:14,17,18 58:3	fico's 45:24,25
f	136:21 143:15	58:10,16 59:9,17	47:23 48:14 70:2
f 112:2,10 201:10	186:5 197:19	60:2 61:10,11,20	149:20 154:20
fact 13:16 29:7	fed's 50:25	61:23 62:1,15	155:18 156:16
35:3 48:5 49:17	fedd 201:10,10	63:5,8,17 64:10,11	165:22 173:21
50:15 64:8 77:10	federal 1:9 4:24	68:17,23 69:4,5,25	174:10,15 177:1
88:9 96:14 155:22	17:23 18:13 35:7	70:1,24 71:6	177:13 178:3,5
158:7 161:21	35:19,21 36:20,24	72:20 91:10,16	180:5,15
162:12 178:6	37:2,7,15 38:16,17	134:7 168:9 177:1	field 12:23 19:13
183:7 190:22	38:23 42:2,20	178:18 179:25	21:3 31:8 57:22
197:9 202:16,17	47:22 51:4 52:5	189:22	58:20 79:18 80:16
factor 68:16	52:17,19 53:4,24	fee 23:15 191:16	80:18
factors 12:8,12	54:2,21,25 55:22	191:18 196:3	fields 20:21
13:6 15:22 16:24	56:4 58:16 59:24	feel 153:22 154:25	figure 60:12 82:24
56:19 57:3,19	62:20,21 68:19	191:1	99:2 104:15 110:7
181:21	70:12,12,19 83:25	feels 193:5	110:19 111:6
facts 67:11 102:10	84:2,10 89:12	fees 21:25 129:9	112:24 118:2,11
102:11 150:21	92:16 95:7,12	161:11 162:19	128:15 150:12
176:22 177:16	96:7 98:17 100:17	163:6 172:23	153:2,24 160:7
178:3 182:22	100:24 106:1,6	173:4 175:12	figures 21:25
185:1 194:1,15,16	108:6,9,13 113:20	176:3 191:8,9,9,24	46:14 47:7 93:22
194:17 195:5	114:3,14 121:17	197:14 199:10	116:18 117:5
factually 108:2	123:24 129:7	fewer 13:16	118:12 122:13
fair 1:6 4:23 83:5	130:15,16 132:2	fico 2:17 5:15	133:1 135:10
103:18,18 138:20	137:10 140:7	17:12,15,22 18:12	144:12,15 145:12
138:20,23 150:10	143:9,15 144:24	28:19 48:8 49:18	figuring 63:12
150:17 152:23,23	147:1 151:11,11	73:6,19 76:10	64:20 152:11,22
209:6 210:3 211:3	154:3 167:12,13	149:22 154:2,12	153:3
	167:23,24 168:23	157:1 159:13,18	

[file - frankly]

Page 17

file 3:10,17,19,21 3:23 94:20 103:8 103:12,14,25 104:2,3,4,22,23 106:9,10,11 108:19 110:8 138:13 filed 4:24 final 94:19 103:23 104:4,24 finally 207:8 finance 6:13 12:21 20:21 21:4 66:23 77:25 80:24 81:17 181:13 financial 6:9 9:4 18:6 20:2,4,16,25 24:18,22 26:6 29:12 56:8,23 59:8,10,18 64:3 74:14,19 75:2,3,12 75:22 76:2,3,5,14 77:4,5 79:25 80:1 80:3 84:16 86:3 132:17 152:9,11 165:15 168:13,15 168:19 180:2 202:12 205:14,15 financially 5:10 75:6,25 76:16,18 77:12,19 205:12 208:11 financials 137:4,8 141:17 142:6,16 142:19 144:6 find 10:13 25:15 25:23 83:3,7,8 92:9 104:7 146:3 160:1 163:15 185:5 209:11	finder 49:17 50:16 88:9 fine 6:3 49:4 70:15 finish 121:12 finished 190:1 firm 5:7,17 first 23:6 24:7 33:15 38:14 40:10 42:11 50:8 58:18 63:19,23 86:2 103:11 104:21,22 104:25 112:1 116:22 125:13 141:21 142:3 185:25 fit 52:15 61:2 96:11 182:20 fits 182:22 five 200:11,11 fixed 85:18 88:15 88:22 89:2,6,7,10 89:14,15,16,20,23 flag 201:18 flash 3:9 flawed 132:21 fleming 2:12 5:16 5:16 10:15 11:3 12:14 13:9,25 14:5,14 15:6,25 16:12 18:15 19:18 21:19 22:13 33:15 33:20 34:12 36:6 36:11 37:1 40:20 73:9,22 76:21 77:9 81:20 82:4 82:14,20 90:4,19 101:18 102:20,22 103:3 104:6,11,16 105:9 110:4 112:22 116:4 133:18 151:16	152:5 155:6 167:15 168:2,11 169:20 177:11 180:19 196:25 197:3 198:14 200:17 207:15 209:5 fleming's 104:2 flexibility 188:4 flexible 49:8 87:4 188:8,10 floated 167:3 flow 38:24 40:12 40:16,16 52:9,15 72:12,14 73:3 97:18 98:3,4 99:1 193:19 202:23 206:7,9 flummoxed 61:15 focus 24:13,19 92:2 153:18 157:10,13 169:16 focused 25:11 78:22 134:15 153:19 158:18 167:8 focuses 131:7 focusing 22:6 77:3 follow 121:20 182:6 198:9 followed 40:1 81:14 following 4:2 111:13 follows 5:23 28:23 29:7,9 111:24 171:3 followups 203:6 foot 115:7 121:13 footnote 70:6 122:19 131:20	132:4 137:3 138:20 139:11 141:21 190:15,18 191:6 192:13 204:17 206:17,18 207:11 footnotes 50:25 51:1 footprint 24:22 40:15 45:7,11,17 185:14 foregoing 210:13 211:18 forget 7:22 169:4 forgot 112:19 form 24:8,19 83:11 158:19,24 171:15 172:3 181:9 format 122:11 formulate 182:1 forth 17:13 23:23 84:12 87:3 101:13 143:13 167:4 forward 209:15 found 50:15 181:15 204:15 foundation 196:25 197:3 four 13:21 157:19 199:23,25 200:2 frame 118:13,19 framed 23:14 framework 11:11 22:11 23:19 24:5 24:17 25:3,5,8,11 46:13 49:21 181:19 frankly 33:4 34:21 39:4 47:10 49:1 74:1 77:16 79:7
--	---	---	---

[frankly - gross]

Page 18

80:11 100:17 106:4 165:12 200:1 201:14 202:3 fredlaw.com 2:11 fredrikson 2:9 5:17 free 210:14 211:20 freely 84:24 front 90:2 frustrating 196:20 full 150:25 170:8 fully 118:2 151:6 function 119:18 130:9 155:22 190:22 functional 192:23 193:1 functionality 185:12 202:10 functions 41:22,23 72:8 189:10 fund 66:25 fundamental 31:16 55:8 64:2 130:19 152:14 175:5,20 194:5 fundamentally 30:22 44:11 54:25 58:18 60:9 153:4 195:3 further 16:4 71:8 71:22 76:12 90:1 109:24 195:21 207:13 furthermore 208:10	gained 53:5 204:20 gaining 56:6 garnes 201:20,22 202:2 203:9 general 8:9 11:21 25:10 52:2 53:6 53:23 57:18 80:22 90:6 105:24 129:5 129:8 173:18 180:18 184:2,25 203:1 generally 10:3,5 10:17 16:25 38:6 56:13 69:6 72:14 72:23 78:8 79:25 83:9,19 91:20,23 116:1,11 128:1 146:12 160:24 191:10 204:11 generate 63:23 84:1,4,6,8,9,10 95:15 96:5 124:7 141:3 143:12 164:4 generated 55:12 126:21 generates 202:19 generating 31:9 generous 118:13 gentlemen 189:16 geographies 101:24 geography 62:22 gesture 159:10 getting 77:8 93:19 149:5 ghislanzoni 207:8 give 37:22 44:15 54:11 55:16 57:11 59:13 62:4 65:18	72:11 74:23 79:22 81:1 95:16 100:5 102:14 111:3,22 116:5,5 152:4 157:3,8,8 173:5 184:8 195:21 196:2 198:12 202:1 204:6,18 given 53:18 150:21 160:4 giving 76:11 glad 166:10 global 56:24 61:23 62:2,15,18,19,25 globalization 63:1 globally 62:17 go 4:20 9:24 16:4 17:1 22:21 34:18 56:21 60:14 61:8 61:16 62:7 63:13 70:17 75:21 77:18 77:21 79:1,10 81:11 82:2,22 92:10 95:19 97:25 98:10 99:4,10 100:20 103:1 105:12 109:23 111:1 115:15,16 124:20 130:24 132:18 141:25,25 143:23 150:11 175:4 185:8 188:22 goes 75:2 81:6 98:21,22 127:24 127:25 going 4:11 19:6 26:6,8 40:22 43:9 49:5 50:3 56:13 61:1 69:11 78:4 78:18 79:22 81:20	82:6 86:11 95:16 96:8,11 101:19 102:14,18,22 104:15 111:1 113:2 114:20 115:13,17 116:16 126:5,15,21,22 128:20,23 130:23 140:1,15 143:2 151:21 156:8,19 163:13 171:17 180:20,22 185:21 185:23 188:2 193:4 204:18 206:16 good 4:10 6:2,3 39:20 65:5 67:20 68:2,4,7,11 138:23 147:15 161:1 169:5 182:8 193:6 196:18,19,21 goodwill 159:9 gould 2:3 4:4 5:2 5:15 granular 69:11 72:13 great 9:1 66:13 greater 128:19 142:7,19 gross 32:23 34:10 83:10,12 91:15,25 92:25 93:11,13,20 93:22 94:9 95:14 95:15 100:1 101:8 109:16 113:3,5 116:18 120:5 122:13,21,23 125:5 127:23,24 128:8 130:3,5,9 131:10,22 132:9 134:6,9 136:8
g			
g 4:1 gain 73:2			

[gross - implemented]

Page 19

137:18 138:6,12 141:3,13,18,22 142:7,11,16,18,20 145:11,21 ground 102:10 group 7:18 8:10 113:22 203:19 guess 94:20 161:23 201:25 guidance 78:9 guidelines 78:9 guys 190:23	headers 105:13 hear 42:6 102:6 heard 39:5 76:15 hearing 13:4 67:18 heather 2:6 5:14 82:14 held 5:1 8:12 helen 204:4 help 20:8 39:14 105:7,9 149:14 163:25 166:24 167:7 182:1,8 187:8,25 helped 155:16 156:18 180:10 193:20 helpful 20:11 23:9 39:14 49:16 80:1 80:4 109:25 110:21 111:2,3 116:2 124:8 152:8 175:13 184:16 185:14 203:8 204:13 helping 179:23 helps 92:10 153:16 hennepin 208:3 hereto 208:11 hey 11:19 39:19 45:1 75:18 87:11 106:7 124:4 143:10 155:25 157:14,22 161:16 171:16 185:9 186:6 190:20,24 193:8 196:18 203:3 206:9 high 6:7 54:12 174:4	highest 60:16 180:12 highlight 49:14 201:17 highly 58:19 historical 38:11 history 54:21 hit 98:7 hkliebenstein 2:5 hm 119:22 holding 167:10 holistic 80:7 holistically 79:16 homegrown 188:24 hope 153:16 hopefully 203:7 hoping 203:21 hour 40:22 81:20 180:20 hours 199:8 house 82:16 houston 201:9 human 80:23 187:11 hundred 165:9,10 hypothetical 149:22 150:3,5,9 150:24 151:1,4,5,7 152:3,19 168:17 hypothetically 170:6	idea 130:11 150:9 150:11 175:20 183:25 185:20 ideas 184:20,22 identical 32:17 identification 4:9 91:7 102:17 103:6 140:20 identified 25:23 26:18 28:25 46:25 47:15 84:7 85:13 86:4,9 87:1,20 88:5 89:18 91:16 94:1 105:5 107:7 107:9 108:7 131:21 137:20 149:3,8 155:10,12 155:13 194:22,24 195:13 197:15 201:12 identifies 88:7,10 90:9 identify 5:12 11:14 13:23 29:19 39:9 43:23 44:19 55:15 57:17 58:21 62:1 63:8 105:15 108:7,10 125:22 135:3 185:1 188:17 190:17 194:2,16 195:6 identifying 83:12 86:10 88:1,2 ignores 158:7 illustrate 157:10 immediately 83:7 impact 49:15 62:24 85:21 implemented 192:3
h	h 3:5 half 31:25 handing 91:9 103:9 121:25 131:12 136:20 145:10 hands 150:18 happen 95:18,19 happened 83:22 125:16 143:3 178:14 happening 100:23 happens 104:13 happy 110:1,25 196:19 hard 110:10 187:13,14,19 199:25 harkin 50:24 123:17 127:11 133:25 134:18 205:9,10,19 harkin's 131:2 133:9,19 head 57:12 61:7 173:2 header 48:11	i	i
	iannuzzi 38:3,18 38:19 186:5,21 187:16 188:5 189:13,14 190:19 190:24 192:7,23 ibm 188:17,21 189:1,8		

[implicit - insured]

Page 20

implicit 160:8 important 24:8,11 35:1 64:22 65:4,9 65:13,20 171:2 improve 67:5 inappropriate 87:24 inclined 61:1 include 48:25 124:21 125:5 145:22 175:2 176:1,9 199:24 included 49:10 96:15 98:13 107:9 108:13 113:4 114:9 123:18 124:12 129:4 133:12 136:11 170:16 191:15 195:15 209:13 includes 48:13 80:21 95:7 96:1 125:2 136:2 146:7 184:22 200:1 including 7:7,12 38:10,18 91:17 152:19 159:3 inclusive 98:19 income 31:9,10,15 45:5 60:20,25 109:21 121:15,16 129:21 135:3 136:12 174:19,23 179:6 181:7,20 182:9 183:18 184:11 194:1,3,10 194:17,24,25 incomplete 78:5 79:22 incorporate 50:5 190:11	incorporated 25:6 211:12 increased 191:10 increases 194:11 incremental 44:21 45:6,10,11,16,19 45:20,22 174:18 179:6 191:3 194:10,25 incurred 125:13 125:15 127:3 128:3 129:1 133:2 192:24 193:2 incurring 190:20 191:5 incurs 84:1,3 independent 51:2 51:7,8 independently 27:3 68:11 indiana 1:9 indicating 49:8 50:13,18 209:13 indication 31:5 indicator 97:7 individual 71:2 individually 71:9 industries 68:12 industry 8:23,25 31:14 45:14 53:23 54:18 56:7 64:6 64:16 65:24 66:7 113:10,11 117:19 117:22 118:1 149:14 151:25 152:1 155:17 158:8 159:11 161:2,9 197:2 infection 81:1 inflated 31:24 47:7	inform 183:14 193:25 information 39:10 52:21 54:5 55:7 55:18 70:4 71:17 72:15 80:25 81:6 81:8,16 83:18,21 92:19 94:5 95:13 95:17 96:8 98:9 98:17,18 100:25 101:23 105:15 106:11 108:4,20 109:17,24 110:5 113:14,21 114:3,4 123:25,25 126:10 127:1 130:4 134:13 136:13 142:4,10,13 143:11,16,20,22 144:23 146:1,12 147:1,5,10,24 148:13 149:12,15 150:20 159:3,24 170:1,11 189:1 197:18 203:5 204:21 205:12,14 205:16 206:12 informative 183:19 193:25 informed 43:24 157:21 infrastructure 56:24 61:9,13,15 61:21 130:25 infringe 50:11 infringement 10:8 16:21 17:14,24 18:14 21:11,18 25:2,14 28:14,20 29:22 48:8 154:5 163:11,20 168:1	168:25 169:19 183:17 198:21 infringer 16:20 21:10,17 infringes 48:3,3 infringing 47:22 ingredient 175:16 initial 87:9 initiating 172:11 inputs 31:13 inquired 148:1 insight 74:23 162:12 insights 183:4,6 instance 98:1 instances 15:12,15 75:14 96:11 97:22 98:14 107:4,5,7 109:18 156:14 157:12 182:16 186:25 188:5,7 instruction 199:24 instructive 155:24 157:15 158:12 161:16,21 163:14 181:21 183:9 184:17 185:22 187:5 insurance 1:9,9 4:24 8:23,25 9:1 32:9 54:18 59:22 62:18 64:6,19 66:7,20 67:1,20 93:1 126:13,14 128:5,11,14,22 130:21,22 209:6 210:3 211:3 insure 12:24 insured 59:21 66:9 66:10,11
---	---	--	--

intangible 6:16 17:3 150:16 176:5 integration 8:1 59:3 intellectual 6:16 17:3 intent 70:7 interaction 87:17 interactions 166:8 interchangeably 20:23 interest 109:25 interested 5:10 63:25 64:3 152:13 158:24 168:14 208:11 interesting 169:14 interface 52:11 interfere 4:17 interference 4:15 international 121:18 internet 51:23 52:2 interpret 105:14 interpretation 49:24 interpreted 133:15 interrelated 45:5 interrelationships 68:9 interrogatories 91:17 101:20,22 106:7 interrogatory 3:8 91:11 92:2,5,18,25 93:10,21 94:23 95:5,25 96:15,21 99:12 100:2,8,12 100:14 101:7,14	102:3,12 106:13 108:12,16,17,21 109:2,4,12 110:8 110:15 114:13,15 122:22,24 134:8 134:14 138:7,11 138:21,24 141:2 141:13,19,23 142:4,5,8,12,20 145:15 205:13 interview 71:21 113:8 201:20 interviewed 35:5 37:25 44:22 65:2 205:19 interviews 41:2 intrinsic 152:12 152:14 161:24 173:7,14,17,22,24 174:1,5,11,16 175:1,5,8,21 176:1 176:7,25 177:12 177:23 178:21,24 179:9,10 181:10 194:5 intrinsically 153:4 introduced 203:3 investigating 39:18 investigation 40:5 89:11 investment 7:18 66:25 involved 7:5 11:23 83:20 195:15,15 involves 44:14 involving 201:9 irrelevant 13:2 isaac 1:6 4:23 209:6 210:3 211:3	issue 28:6 32:24 34:11 39:19 49:15 63:24 71:11 74:3 74:4 75:18 77:11 78:16 79:6 81:7 83:13 86:5 92:14 95:24 99:24 106:16 110:16 115:11 116:19 124:14 138:23,25 139:1,6,19 153:20 163:13,25 167:1 169:1 185:16 issued 108:4 issues 6:9 7:6 12:18 75:4 84:18 102:7 138:9 157:20 184:17 italicized 12:6 item 129:3,4 items 176:19 j jackie 1:25 5:7 jacqueline 208:5 208:19 james 2:17 jennifer 206:22 jerd 206:14,15 jim 82:16 job 49:14 66:11,22 67:5 76:1 92:12 113:19 153:23 168:18 196:18,20 196:21 judge 39:23 80:12 80:12 judges 79:5 judgment 14:23 judgments 95:11 july 208:16 209:4	june 1:25 4:5,12 200:14,20,21,23 jurisdiction 78:14 justifiable 157:3 k keep 92:17 95:13 140:1 143:10 165:17 206:10 kept 96:6 146:2,8 146:13,17 147:7 kevin 205:9 kind 9:2 33:24 42:23 50:12 52:15 81:10 92:19 94:6 118:13 126:8 142:13 143:13 156:17 171:7 185:20 188:23 190:25 196:16 199:25 202:15,16 202:21 kliebenstein 2:6 3:3 5:14,14 6:1 10:23 11:8 13:3 13:12 14:3,10,18 15:14 16:9,14 18:18 19:24,25 21:23 22:15,19,22 23:2 33:18,23 34:17 35:16 36:9 36:14 37:3,4 40:23,25 43:6,17 73:13,16,18 74:6 76:25 77:1,17 81:23 82:1,5,19,21 90:7,15,20 91:8 94:21 102:14,18 102:21,24 103:4,7 104:5,9,17 105:11 112:25 113:1 114:17 115:3
---	---	--	--

133:21,23 140:25 151:23 152:6 155:9 167:19,20 168:7,22 170:12 177:12,15 180:21 181:5 197:1,13 198:15,17 200:24 207:13 knew 66:4 90:11 179:16 180:7 189:4 know 14:16 15:8 18:2,2 34:1 37:22 39:19 40:5 53:17 53:22 54:1,9 55:20,21,24 56:4 56:22 57:20 58:13 67:10 68:20 69:7 69:12 71:9 72:7 72:12 78:4,6,24,24 79:3,5 80:2 82:15 83:7 87:7,12 89:23 93:12 96:14 100:5 101:2,16 102:9 103:17 104:6,25 108:6,9 108:13,25 110:6 111:10 113:19,24 116:8 118:17 124:19,25 127:2,2 127:15 129:7,24 132:19 137:9 140:12 141:10,11 145:20 148:24 154:14,15 155:7 156:1 158:14,20 159:4,13,15,17,20 159:22 160:6 162:11 164:19 168:5,8 169:1,9,24 172:18,19,21,22	172:24,25 173:3 173:21 174:10,18 176:14 179:9,16 179:20 183:10,24 184:6,15 186:13 187:18 188:20 189:5,15,25 190:5 190:7,13 191:22 191:23 192:1,4,6 192:14,16,19 193:6 196:23 197:5,17,19,21 198:4,22 199:6,10 200:8,9,12,22 201:3,6 204:12 knowing 178:12 178:14 knowledge 38:10 42:16 150:20 186:8 kursh 24:15 35:5,6 44:22 159:2 160:9 199:1,4 kyle 2:22 5:5	late 149:5 159:22 law 5:17 11:22 12:20 19:9 75:16 77:3,25 78:7 80:11 175:10,18 183:16,19 184:3,9 184:20 lawns 90:24 91:3 laws 184:16 lawsuit 51:3 111:18 124:14 172:6,9 lawyer 10:22 11:10 12:17 75:19 183:20 184:24 lawyers 78:12 lay 52:22 85:7 184:2,8 lead 34:13,15 35:14 113:14 leads 171:7 learn 48:20 64:25 65:3,22,23 66:6,12 67:11,11,14 202:17 learned 40:6 65:19 70:19 leave 44:16 45:2 139:5 169:9 leaving 39:11 40:18 led 40:15 left 105:18 legacy 125:6 legal 5:5,8 10:16 11:4 12:15 14:15 15:7 16:1 21:19 25:11 46:13 73:9 73:23 74:2 75:4 75:18,20 76:4,22 77:2,11 79:2	184:10 209:1 212:1 lemon 13:10 length 30:18 59:5 84:20 123:22 125:24 151:14 155:3 179:20 lengthy 101:15,17 202:25 lens 78:20 79:20 80:6 letter 209:19 level 6:8 19:14 31:22 32:9,10 36:21,25 37:8,10 37:11 60:16 115:7 121:13 135:4 174:4 levels 198:20 liability 6:10 9:7 34:22 48:2 49:7 151:12 154:7 liable 167:25 168:24 169:18 license 9:11 21:25 24:9,11 154:2,5,12 155:1 156:17 157:1 158:14,15 162:19 164:5,24 165:8,11 167:13 170:15,16 171:4 171:11,20 172:25 175:12 176:10,11 179:2 191:8,16,18 192:20 195:9 196:3,10 197:9 licensed 8:2 27:7 161:25 licensee 159:13 183:7 195:17
	I 7:16 66:16 la 128:2 lack 28:24 47:18 93:9 160:25 161:24 lae 125:13,14 127:3 128:3 laid 46:10,11 122:12 language 75:13,13 laptop 104:2 large 171:25 largely 119:13 larger 120:4 159:5 164:18		

licensees 154:21 164:25 165:25 183:8 195:21 197:15 licenses 129:9 154:20 160:6 163:12 164:15 165:1,22,23,24 195:9,13 licensing 6:18,21 6:23 7:3,6,10,12 7:12 150:23 155:18 160:10 165:2,7 licensor 196:2 light 50:9 lightly 78:17 limit 154:23 line 15:11 20:2 43:18 117:11 129:3,4 164:25 165:25 209:13 211:7 212:3 link 111:9 linked 88:13 list 39:9 43:22 50:17 56:12,17,21 70:7 96:21 148:22 153:12 157:2 173:21 174:10,15 174:20 192:12 200:4 202:8,24 204:13 listed 49:22 57:19 68:16 69:22 71:23 80:16 93:12 100:2 100:3 109:2 211:7 211:17 listened 203:19 listing 211:7	literally 42:14 65:23 literature 70:1 litigation 6:25 123:7,13 146:6,11 150:15 little 8:7 25:16 33:11 39:12 49:25 69:2 71:20 74:23 84:24 122:19 126:1 155:17 161:2 162:7 165:18 168:5,18 176:24 193:11 197:17 199:18 205:10 206:24 lived 101:18 lloyd's 65:1,14 67:6 located 5:2 london 65:1,14 67:7 long 8:25 34:13,19 54:21 89:3 140:12 159:8 190:3 202:9 203:7 longer 8:7 85:10 look 35:12 36:5 40:2,12 48:11 74:22 75:3,24 78:2 79:12,16,20 83:4 89:3 95:13 97:18 98:25 100:20 102:25 104:22 112:5 118:23 120:1 124:18 126:8 129:16 132:11,16 133:14 138:2 139:9 143:10 148:10 158:16	164:19,21 169:10 169:11 170:22 174:17 179:7 180:2 190:20,24 193:18,21 196:18 206:17 looked 51:18 52:11 85:25 122:22 126:10 173:9 199:15 looking 17:5,7 23:4 30:18 37:20 49:19 51:24 52:9 78:3 79:15 89:20 93:20 94:7 103:13 104:1,20 105:2,9 108:24,24 109:15 121:13,15 123:1 131:18 132:9 146:24 158:16,23 169:9 170:11 171:9 172:14 173:17 looks 105:1 lookup 186:1,11 186:14,19 loop 160:21 lose 156:8 188:4 loss 117:15 118:8 119:8,9,10 120:11 120:12,16,19,23 121:1,5 127:7,25 128:11,16,23 140:8 144:12 146:24 148:15 149:19 losses 125:12,13 125:13,14,18 126:15,16,23 127:3,6,21,22 128:2,8,19 133:2	133:12 135:16 140:4 144:15 147:2,18,20 lost 9:11 21:25 23:15,16 93:17 175:12 183:18 lot 22:2 38:21 41:6 42:3 44:14 66:20 67:1 79:3,4 81:24 157:8 170:3 194:18 201:14 202:13 lower 118:15 lunch 82:3 112:18 114:18,22 115:19 122:23
			m
			madam 209:10 mail 2:5,11 main 28:15 194:19 maintain 56:23 59:7,10,18 maintenance 157:18 158:4 161:10 163:6 172:22 176:2,3 191:23 192:5 major 126:14 making 10:21 11:7 24:20 39:13 49:4 49:7 64:23 75:14 75:16 76:2 82:17 95:10 100:21 111:18 157:15 172:2 179:22 187:7,11 manage 89:4 127:20 128:25 130:23 managed 80:23 89:12 138:3

145:18 146:25 149:17 management 55:10,13 58:25 80:22 189:2 managing 64:18 66:23 131:1 manifest 31:17 45:7 165:6 manpower 191:11 manual 185:25 186:2,11,14,19 manually 31:2 186:25 manuals 186:1 map 111:16 margin 117:1,2,3 mark 77:16 102:18 marked 3:14 4:8 9:17 91:6,9 102:16 103:5,10 122:1 131:13 136:20 140:19 145:10 market 31:13,17 32:4 45:5,8 47:4 60:23 65:1,22 150:10,17 152:23 153:11 174:20 177:2,23 180:11 181:7,20 182:9 184:11 185:22,24 195:5,7 marketing 51:19 51:20 52:24 55:1 69:25 174:22 176:11 195:16,22 196:7,23 marketplace 152:16 159:11	161:17 177:7 178:7 marks 43:14 82:11 114:25 140:22 181:2 207:17 match 92:21 112:10 114:15 130:12,14 132:1 134:13 135:18 148:7,8 174:19 matched 118:20 120:2,6 matches 129:17 material 4:8 22:24 91:6 102:16 103:5 140:19 192:23 materials 51:3,19 51:20 52:12,23,24 148:20 math 20:13 118:3 matrix 198:2 matter 4:23 8:25 matters 8:24 48:19 208:7 maze 98:6 mccarter 35:6 44:23 69:15,21 70:11,19 71:18 73:5 185:9 186:3 187:14 188:6 189:11 mccarthy 113:8 113:13,14,17 114:2 207:3 mckone 1:25 5:7 208:5,19 mean 14:12,22 15:24 16:17,17 20:4 33:24 37:9 45:11,15 46:1,11 46:13,13,14 57:16	57:20 58:5 61:14 61:15 65:22 69:7 69:22 77:14 79:14 79:19 80:5 84:9 84:13,14,15 87:20 89:8 93:16 107:3 110:2 111:17 121:19 129:15 134:24 135:19 141:15 145:24 146:18,23 154:14 158:22 164:7 166:17 172:8,16 173:24 174:6 181:11,24 182:1 185:21 187:24 199:18 meaning 78:3 144:19 205:20 means 14:24 16:10 20:6 45:21 128:10 145:5 meant 70:2 90:11 141:7 145:2 147:13 measure 24:23 31:19 39:16 45:6 45:18 46:4 72:24 126:5 143:9 175:7 182:19 194:4 202:11,11 measured 177:23 measures 57:10 measuring 64:5 178:21 media 4:21 43:14 82:11 114:25 140:22 181:2 medium 171:24 memorialization 67:15	memorize 67:12 memorized 53:21 memory 10:14,17 53:9 57:9 91:21 125:9 134:21 139:22 mencke 204:4,4,23 mention 55:10 mentioned 6:24 45:10 65:14,16 66:17 79:12 80:15 82:15 86:22 87:18 89:19 146:21 149:6 194:20 menu 151:21 merchant 2:3 4:3 5:2,15 merchantgould.c... 2:5 met 178:11 methodology 133:1,6 metric 119:16,17 microphones 4:13 4:17 middle 85:10 midwest 209:17 212:1 million 8:20 117:9 117:10 162:18,21 171:19 197:20 mind 34:20 38:22 39:11,18 45:1 52:3 64:15 74:19 81:6,21 89:24 142:23 143:2 144:5 170:11 175:3 mindset 151:12 152:4 168:9,13
---	---	---	--

mindsets 151:9 152:21 153:3 mine 104:13 minneapolis 2:4 2:10 4:4 5:3 6:4 minnesota 1:2 2:4 2:10 4:5 5:1,3 208:1,5 minus 119:10 minute 139:25 minutes 40:24 82:3 mischaracterized 150:2 misleading 13:2 42:25 101:4 misnomer 168:18 missed 47:16 70:14,15 77:15 missing 76:8 misstates 19:18 33:16 151:17 mistaken 138:19 misunderstanding 150:4 misused 163:10 mix 42:24 65:7 model 45:24 46:1 46:2,3,5,6,7,11,14 modification 147:19 148:5 modified 188:9 modify 147:22 modifying 28:5 modules 25:22 moment 52:12 186:22 192:12 money 64:9 66:20 67:1 158:2 months 120:3 190:6 207:1	morning 4:10 6:2 6:3 move 89:5,12 112:17 121:9,25 129:1 131:5 144:11 145:8 153:16 180:8 moving 8:3 15:20 25:1 53:10 132:24 135:20 169:8 170:5 172:4 187:24 198:2,12 multiple 65:10 95:22,24 106:24 106:25 107:1,5 109:18 113:5 114:10 151:16 168:2 182:23 203:1 204:1 206:1 206:20 myopic 78:5 myopically 101:12	106:9 138:13 natural 40:20 nature 38:1 90:13 90:16 167:5 195:23 203:2 near 167:9 necessarily 97:17 98:15 need 15:8 20:12 32:18 40:5 50:11 63:22 64:8 68:20 69:1,12 74:18 79:6,16 80:5 85:3 86:11 88:3 89:2 95:19 101:10 105:21 106:7 109:15 124:1 127:16 170:8 176:21 188:8 needing 11:15 needs 14:24 20:9 26:9,15 84:20 94:5 129:13 134:3 145:1,3 154:6 184:4 197:10 negotiate 151:14 180:12 negotiated 150:13 negotiating 167:21 179:11 negotiation 3:16 149:22 150:3,6,9 150:24 151:2,6,7 152:3,20 168:17 178:19 negotiations 162:3 162:9,13,16,24 163:12,15,24 166:2,11,12,14 167:4 168:10 170:18 179:21	180:14 195:10 neither 107:23 208:9 net 117:14 134:18 134:19 135:1 never 164:10 165:7 new 151:14 193:3 nexus 11:15 12:4 12:22,24 14:11,22 14:24 20:3,4,15,16 20:18,19,24,25 21:2,5 29:6 125:23 164:1,9,11 167:2 184:4,18,21 184:23 nice 181:25 182:1 non 181:23 normal 85:7 135:13 north 7:19 8:10,16 8:19 121:21 128:6 notarized 209:14 notary 208:5,15 209:25 210:10,18 211:15,23 212:23 note 4:13 82:17 83:4 209:12 notes 208:8 nothing's 28:25 notice 4:6 noticing 208:13 nuances 11:22 null 28:25 29:11 29:14,16,19 44:25 46:24 number 1:4 27:10 27:14 28:5 29:10 29:10 53:20 54:11 55:5 58:14 62:4,7 92:6 93:11,21
---	---	--	--

[number - options]

Page 26

94:13,14,22,23 95:6,11 96:1 99:12 100:2 102:3 105:4,17 106:24 107:1,2,5,7,8 108:21 109:2 110:15,19 116:22 116:24 119:9 120:2,6 122:15,22 122:25 131:21 132:4 133:19 138:20 157:5,6 158:11 160:18 161:12 162:20 171:19 178:24 185:6 197:20 199:8 209:7,13 numbers 17:19 25:25 26:1,7 50:6 82:25 83:1 91:11 92:23,24 111:7 112:4 115:10 116:11 117:8 118:4 124:23 132:12,13 135:18 139:13,14 148:7 156:21 163:1 167:8 211:7	168:2,11 169:20 197:3 200:17 objections 92:13 92:22 95:1 objective 156:10 obligation 11:25 12:23 observation 155:21 197:2 observed 63:1 87:13 obtain 59:22 occurred 48:24 83:16 154:6 193:1 occurring 109:19 occurs 110:20 odds 128:15 odm 188:21 offer 26:7 48:1 74:4 161:18 offered 180:9 offering 6:11 67:20 68:4 75:20 76:4 168:12 184:10 offerings 56:25 63:4,6,10,18,20,22 64:10,12 65:7 offers 167:14,23 official 210:15 211:21 oh 22:21 40:1 103:23 117:8 122:19 131:17,20 135:24 138:19 141:15 142:25 185:8 190:15 197:25 ohio 209:2 okay 10:7,24 14:4 17:9 18:19 19:5	19:16,24 22:6 24:4 28:4 32:22 36:11,16 37:1 42:6 43:5,6,21 53:11 58:9 66:17 68:15 70:18 73:15 81:19 82:23 83:9 91:5 92:3 93:6 94:8 103:3,21 104:19 112:19 115:14 116:7,14 116:17 118:24 119:11 121:3,9,10 121:12,25 122:20 131:6,17,18 132:24 135:21 136:22 139:25 140:2,13,14 141:10 145:9 148:9,12 162:6,8 173:21 182:13 198:7 199:6 old 44:13 oldest 54:3 once 64:24 107:10 107:13 110:20 112:4,6 ones 71:10 84:11 108:15 155:11 open 34:20 39:18 45:1,2 170:11 177:2,23 operate 62:17,22 135:14 operates 56:7 operating 167:24 opine 30:4 77:3 opinion 17:9,18,21 18:4 22:10 23:18 23:19 24:4 30:11 32:22 33:14 34:8	37:19 44:7,23 46:18 47:21,24 54:6 55:17,21 58:15 59:8,16 60:7 61:9 62:14 63:5,16 64:10 67:23 68:17,23 69:3 70:23 71:5 73:6,19 74:18 76:4 79:7 80:8 127:13 149:20 155:14 160:14 167:11,22 168:8 168:12 174:25 184:10 opinions 9:6 18:10 22:9 24:15 30:9 48:2,7 69:19,20 74:4 75:20 84:23 102:2,4,8,10,13 120:20 149:10 154:1 160:16 162:10 169:23 186:2 opportunities 31:10,11 opportunity 66:13 67:4 opposed 31:21 32:7 67:14 84:25 90:6 98:19 99:7 148:4 158:19 opposite 88:20,25 89:8 119:9 option 161:19 170:20,21 171:9 183:8 options 3:16 156:2 157:23 179:1,17 185:10,23
o			
o 4:1 oath 5:9,23 79:9 object 10:15 13:9 14:14 15:6,25 76:21 151:16 objection 11:3 12:14 13:25 14:5 14:6 16:12 18:15 19:18 21:19 33:15 33:20 73:9,22 74:1 77:9 152:5 155:6 167:15			

oracle 155:24 156:13 157:13,21 157:22,25 159:3 160:22 161:5,13 172:4 188:18 189:1,8 197:25 198:1,1 order 142:2 187:25 195:20 ordering 208:13 ordinary 56:10 74:12 75:1 92:21 114:16 123:4,6,10 123:14 124:3,6,7 124:15 125:17 127:8,20 131:23 132:1,16,23 134:12 136:18 137:23 138:3 139:3 143:11 144:21,22 145:18 146:2,8,13,15,17 146:22 147:7 164:10 181:17 190:25 195:1 206:11 org 97:20 organically 190:25 192:4 organization 40:16 organizational 80:23 81:15 organized 38:25 original 170:20 208:8,12 outcome 5:11 170:7 outlandish 165:13 outlined 6:7 9:14 10:19 25:5	outright 170:4 outside 150:15 overall 25:10 118:12 142:14 143:21,22 149:10 156:18 overinclusive 94:25 95:3,6,9 96:10 98:19 99:14 99:19,23 143:18 199:19 200:2 overlap 12:19 27:19 overly 147:7,14 overreach 86:6 overriding 86:5 oversimplified 13:18 14:2 oversimplifies 41:10 oversimplify 14:4 overstated 48:12 overstatement 199:20 owned 66:9	162:14,18 171:16 185:5,7 191:5 198:8,15 209:13 209:15 211:7 212:3 pages 10:20 133:19 paid 161:22 163:8 173:3 197:16,19 pandey 40:3,4,10 50:24 52:14 73:5 201:24 205:23,24 207:6,6 paper 102:21 103:2 116:2,13 paragraph 12:5,6 16:3 20:1 25:24 26:18 37:24 53:10 69:14,23 71:25 75:24 82:22 83:25 84:9 85:6,10,24,25 86:20,21 90:5 112:17,19,20 113:2 115:23 133:19 162:5 170:13,13 187:25 190:9,9,15 198:14 201:12 paragraphs 13:20 16:8 17:5,8 54:20 70:10 120:18 190:16 part 7:10 22:4 24:14 33:15 35:4 35:5 40:13 41:12 49:14 64:22 65:4 84:22 97:10 98:23 117:24,24 150:1 157:21 168:20 169:7 171:2 178:1 178:2 198:22,24	211:9 particular 6:15 37:23 65:25 66:1 99:13 146:10 176:22 particularly 63:2 186:5 204:16 parties 4:19 5:13 150:13,19 151:9 151:13 152:4,19 153:2,22 156:22 157:7,13 162:2,12 162:13 167:8,21 170:20 171:10,10 172:11 177:3,6,25 178:23 208:9,11 208:13 parts 24:7 30:19 201:18 party 5:9 169:7 170:4 177:25 179:2 201:9 208:13 patent 150:14 153:1 pay 155:22 164:18 165:5 166:5 172:22 paying 157:25 payment 154:6 177:6 payments 195:12 payroll 81:3 pays 174:20 pc 5:2 peer 7:24 peers 148:21,23 149:3,13 pending 36:13 pennsylvania 1:9
---	--	---	--

people 11:19 35:7 37:25 38:10 39:13 39:25 40:11 42:3 42:15 44:14 51:4 65:2 80:1 85:4 86:6 98:8 129:18 155:21 169:4 170:3 181:17 186:4 187:7 196:10,19 201:17 202:9 203:1 204:1 204:19 206:2,3,21	143:14 186:9 187:19 permitted 87:16 person 37:21,23 38:2 39:23 52:22 85:7 100:6 181:13 184:2,9 personally 165:19 201:13 210:11 211:15 perspective 24:19 34:21 39:17 76:2 76:4,5 107:24 152:1 165:15 169:15 176:25 177:14,22 178:3,5 179:25 180:5,15 187:4 perspectives 178:18 pertinent 161:6 185:1,17 194:2 195:6 pervasive 55:9 peterson 2:22 5:5 phone 2:4,10 209:3 phrase 12:7 15:4 15:17,21 16:8 18:17,21 20:2,4,11 45:16,21 77:4 79:14 84:8 90:2,8 90:11 120:11 168:17 phrases 45:12 pick 4:14 pieces 181:9 place 4:16,19 18:1 25:21 130:25 placed 154:19	places 16:19 17:17 52:3 59:25 192:11 plain 143:4 plaintiff 1:7 2:7 4:23 5:15 13:8 plaintiff's 10:5 11:14 87:11 plaintiffs 48:19 plausible 68:25 69:9 164:13 182:21 play 155:5 176:19 please 4:13,15 5:12,18 22:14 143:5 167:18 209:11,11 plus 120:3 point 23:3 29:8,13 40:21 78:2 101:8 101:10 108:8 150:21 157:4 159:24 160:5 164:3 188:13 189:4 pointing 171:13 points 45:8 47:5 51:22 126:1 201:18 policies 53:14,19 93:1 96:1,14,22 97:11,13 108:7,13 108:25 113:4 114:10 123:18 124:13,19 128:18 128:19 135:2 145:21 policy 32:9 95:21 96:21 97:23 98:11 98:21 105:17,23 106:24 107:1,2,5,6 107:8,13 108:20	109:19 110:19,19 111:7,10 112:4,5 128:20 polite 33:7 164:7 196:21 poll 134:25 portion 84:4 119:15,16 posited 111:22 position 39:22 48:15,17 95:25 101:6 154:18 positions 8:12,13 possibilities 169:3 169:25 170:9 possibility 45:2 96:3 possible 21:1 44:16 58:21 87:5 98:10 124:15 172:6,9 182:19 201:7 potential 165:25 176:11,16 potentially 31:1 193:8 practice 19:13 158:8 practices 155:18 178:11 practitioner 12:17 12:23 pragmatic 193:7 193:12,13 preamble 35:13 preceding 120:17 precise 15:5 premium 92:1 93:21,22 101:9 109:17 113:3,7 116:18 122:13
--	---	--	---

125:5 127:24 128:9,10,12 130:3 130:5 131:10 132:10 134:6,18 134:19,25 135:2 139:8,16 141:3,14 142:17 145:6,21 premiums 32:24 34:10 83:11,13 91:15 92:25 93:11 93:13 94:10 95:14 95:16 100:2 113:5 117:15 120:5 122:21,24 126:16 126:17 127:23 128:3 129:23 130:9,22,24 131:22 134:9 136:9 137:18 138:6,12 141:19 141:22 142:8,12 142:18,20 145:11 preparation 162:10 prepare 106:2 prepared 56:9 113:25 121:16 123:7 131:25 preparing 9:6 106:14 137:14 presence 56:25 61:24 62:3,16 present 2:16 13:1 82:16 179:14,15 180:3,4,5,17,18 presented 66:14 199:3 presume 9:6 151:11 154:1 presumption 17:10 18:12	presumptions 9:9 9:13,25 11:1,6 pretty 68:12 75:11 78:8 90:23 92:11 112:14 previously 3:14 122:1 131:12 price 56:25 63:4,9 63:25 150:18 157:2 180:11,12 prices 63:6,18 153:12 155:21 164:14 165:24 173:22 174:10,16 174:20 pricing 41:23 63:24 164:24 198:2,5 primarily 6:17 28:4 206:4 207:6 primary 145:5 principally 53:13 principle 86:7,16 150:10 183:10 196:17 principles 67:14 67:15,16,18 78:11 84:25 151:25 153:7 174:13 179:14 180:16,18 183:22 printout 146:10 prior 14:19 44:2 84:19 123:21 207:1 private 4:14 probably 46:24 60:11 61:1 67:8 68:11,20 70:15 137:16 158:12,16 158:22 196:22	201:1 204:1 problem 47:17 61:8 66:3 78:19 79:1,10,23 80:13 93:25,25 125:23 151:3 153:5,9 173:11 188:16 problematic 49:13 126:4 problems 66:6,18 66:19 203:4 procedure 186:1 186:11,15,19 210:5 211:5 proceed 5:19 110:25 proceeded 50:9 proceeds 48:18 process 38:8,9,24 39:1 40:7,9,9,12 40:14 41:13,14,15 42:11,12,13 64:23 72:15 73:3 81:2 83:9,12,20 97:19 97:20,21 98:2,12 98:25 111:15 119:1 147:11 187:6,11 193:19 206:5,10 processes 41:2,16 41:20 42:1,8,18,21 42:23 procuring 64:18 produced 38:23 40:17 52:15 83:19 95:23 98:18 107:20 123:3 140:6 143:15 205:14,18 206:7 206:12	product 32:15,18 52:10 56:25 63:4 63:6,10,17,20,22 64:10,11 65:7 67:19 68:3 136:14 156:1 158:2 188:21 201:22 202:18 production 205:15 209:15,17,22 products 31:3 64:8 65:8,10,20,20 136:15 156:7 173:1 176:12 180:10 185:15 187:23 188:13,14 188:17 189:8,19 192:15 professional 7:9 7:10 14:23 15:3 16:11 173:4 176:12 profit 12:7,11 13:6 15:21 16:23 45:10 116:25,25 117:1,2 117:3 119:7,11 profitability 97:7 profitable 12:7 profits 16:19 17:10,14 21:10,16 23:16 30:11 44:7 44:21 73:7,20 program 67:2 project 153:18 154:8,9 189:22,23 190:4,8 193:16,21 193:24,25 projects 7:8 66:10 66:20 promised 115:18
---	--	---	--

[proof - really]

Page 30

proof 9:10,13 10:1 11:1,14 12:3 13:5 proper 22:11 23:19 132:6 134:3 properly 172:16 property 6:16 17:3 54:18 64:18 64:19 proposing 171:5 proposition 69:8 proprietary 156:6 protracted 143:14 prove 12:11 13:5 49:5 50:3 74:19 proven 74:8 proves 34:3 provide 31:18 39:15 42:15 46:18 47:7,21 51:21 70:7 76:18 96:8 132:2 147:6 149:14 155:20 156:25 161:7 163:25 167:7 180:14 197:22 provided 14:9 19:14 50:20 55:7 71:22 74:13 75:2 92:19 96:12 103:22 109:12 137:4 141:17 149:12 155:16 156:12 163:18 173:12 185:13 197:11 203:11 205:8 provides 31:4 92:22 177:7 183:4 183:5,6 198:19 providing 80:7 117:22 164:12	187:25 194:22 province 79:4 proving 11:18 proxy 124:24,24 132:2 145:24 public 126:11 208:5 210:10,18 211:15,23 212:23 publication 53:23 117:19 pull 113:23 123:11 pulled 98:8,16 113:24 114:3,3 pulling 202:1 pulls 199:23 purchase 188:20 purchased 65:10 192:14 purpose 65:17,21 101:3 149:9 purposes 74:15 125:20 pursuant 4:6 put 23:23 60:19 84:11 104:14 129:20 130:24 132:19 173:10 181:14 188:1 196:10,14	question 9:24 11:17 13:23 15:17 17:6 18:10 19:1,6 19:16,21,22,23 22:13,18 23:22 24:4,25 25:11 33:11,16,22,25 34:4,13,15 35:14 36:1,8,9,13,20 37:1,2 40:2 43:2 44:9 46:7,15 51:6 55:6 57:15 61:18 61:19 66:1 70:14 70:15 73:13 79:2 79:3 83:6 88:4 89:22 93:8 95:8 96:4 99:4 101:3 111:21 115:18 124:11 128:7 133:22 138:20,23 141:11,12 151:10 151:22 161:15 167:18,21 168:6,6 169:13 170:10 174:9 177:18 178:2 181:23 182:2,6 195:18 198:25 199:2 questioning 43:19 questions 38:1 56:17 78:12 111:4 114:1 151:16 166:10 168:3 185:9 202:9 203:2 203:20,20,23 205:13,21 206:4,8 207:14 quicker 104:8 quickly 83:3 quite 6:14	quote 74:9 76:19 r r 4:1 7:16 66:16 raised 116:20 ramesh 40:4 205:23 range 86:8,10,11 86:13 88:1 89:1 169:3,24 170:8 rarely 32:16 rate 208:14 rating 59:23 ratings 56:23 59:8 59:10,18 61:5,6 ratio 117:16 118:8 119:8,9,10 120:12 120:12,16,16,20 120:23 121:1,5,7 128:23 137:6 ratios 140:8,8 146:24,24 148:15 148:16,16 149:19 reaction 156:16 read 22:23,24 23:12 58:24 133:13 149:24 207:15 210:5,6,12 211:5,6,17 reading 17:25 80:1 209:19 ready 22:16,20 real 63:3 153:5 realistic 147:13 really 25:17 39:22 39:24 40:6,9,13 41:9 42:17 46:5,6 67:2,10 74:2 77:24 80:4 84:13 87:13 92:17,21,23 98:10 134:15 150:16 151:9
	q		
	quality 57:1 68:24 quantifiable 28:12 29:15,16,20 quantified 6:14 17:19 28:9 quantify 186:17 quarrel 133:8 queried 108:6 queries 124:1 query 123:12 146:11,20		

[really - relatively]

Page 31

177:3 182:5 187:3 187:6 191:2 193:5 realtime 33:19 reason 49:11 122:18 139:24 143:6 164:23 209:14 211:8 212:3 reasonable 13:1 19:12 86:13 130:20 147:6 150:12,19,20 159:5 160:16 170:6 178:9,15,20 183:18 184:19 187:5 193:9 202:2 reasonableness 148:2 149:11 160:15 161:3 reasoning 38:5 reasons 44:12 59:3 87:5 114:12 145:16 195:2 rebuttal 22:8 87:9 recalculated 122:11 recall 106:1 134:1 134:20 202:2,7 203:23 204:2,23 205:5 206:24 recap 54:16 receipt 209:18 receive 17:12,22 18:12 28:19 144:9 received 17:23 18:13 receiving 17:15 recognition 56:22 58:1,4,10,11,17 recognize 18:16 18:21 19:4,8	87:11 104:14 178:11 183:21 recognized 49:2 89:22 162:24 recognizes 178:6 recollection 98:3 118:14 129:10,18 145:6 191:13 207:10 reconcile 110:7 182:24 record 4:11,20 43:10,14 49:9 82:7,11,18 100:15 108:23 114:25 123:15 127:9,19 140:16,22 146:19 180:23 181:2 207:19 211:9 recorded 4:21 124:20 recording 4:18 recordkeeping 71:16 92:21 records 92:17 108:10 111:16 reduce 28:15 158:9 reduced 156:21 157:6 161:12 194:12 reducing 95:11 reduction 32:20 refer 26:8 85:7 88:15 168:20 reference 25:7 52:1 71:25 103:14 190:11 196:22 209:7 210:2 211:2 referenced 210:11 211:15	referencing 63:21 referral 172:19 referrals 195:22 referred 54:23 172:13 184:7 190:18 191:5 197:9 referring 16:3 26:1 32:10,11,21 48:10 52:23 53:15 90:14 93:18 103:16,19,24 109:10 121:7 133:18 136:23 141:20 167:3,5 170:18 refinement 59:2 refinements 83:17 reflect 116:24 reflected 29:17 92:22 135:16 147:3,18,20 150:4 156:10 180:13 196:7 reflects 31:14 144:22 refresh 139:22 refreshed 53:9 regard 11:24 20:3 30:3 93:10 126:1 127:21 133:3 155:25 regarded 58:19 198:1 regarding 12:10 23:10 30:11 102:2 109:5,7 131:3,10 133:1,9 147:2 157:18 184:9 registered 26:12	registration 25:25 26:1 registrations 26:13,18 rejected 167:23 relate 7:6 30:9 47:3 59:4 69:10 70:9 72:14 85:1 89:17 124:10 131:19 167:1 174:18 194:16 related 5:9 6:9 20:22 73:4 115:17 143:18 146:1 176:17 184:20 208:9 relates 12:17 16:23 21:3 28:13 29:21 47:17 110:3 124:16 143:9 149:10 150:9 158:5 173:19 176:8 190:10 191:10 relating 17:9 18:10 34:4 102:8 134:8 186:2 193:15 relation 87:2 relationship 84:16 86:3 88:23 108:16 135:22 192:17 relationships 38:12 54:7,10 55:3 64:21 74:13 75:1 159:8 196:24 relative 202:14 208:10 relatively 97:22 98:4 206:25
--	--	---	--

[relevancy - responses]

Page 32

relevancy 163:23 relevant 78:15 108:10 126:18 163:7,16 166:18 167:10 205:12 reliable 19:12 29:12 33:1,9 34:6 34:25 47:15 176:4 reliance 199:3 relied 113:3 189:11 193:13 204:15 205:16 relies 174:14 rely 182:17 relying 34:24 71:19 130:16 160:9 192:7 199:1 remaining 206:16 remedy 175:11 remember 51:25 53:3 64:20,24 67:9 127:10,18 159:25 200:16,21 201:5,7 203:15 204:8 205:11 206:1 207:7 remembering 65:19 reminded 162:15 remove 48:7 renewals 53:13,18 repeat 22:13,18 94:17 repeatedly 29:1,2 rephrased 43:2 replace 189:23 replaced 38:7 replacement 187:10 190:4,8 replacing 191:18 191:20	replicate 110:11 replicates 25:22 reply 87:10,10 108:1,5 153:6 173:10 report 3:7,12 6:7 9:15,18,20 10:13 16:8,15 17:7,13 18:1,22,24 19:4,5 19:8,15 20:1,5,7 21:24 22:10 23:5 23:8,8,12 25:3,7 25:15,21 27:2,16 28:18 30:1,4,10,19 31:7 32:1,22 33:3 34:23 36:4 43:20 44:6,6,15 45:4,24 46:18 47:21 49:20 54:6 55:11 68:17 69:14 70:9 73:6 73:19 74:7,9 75:11 76:13 77:6 80:10 83:2 84:12 86:16 87:7,9,9,10 87:16 88:6,12 90:5 91:16 93:23 94:7 99:25 103:14 105:6 106:15,17 107:10 108:1,4,5 114:6,21 115:5 117:25 120:14 123:14,22 124:16 125:25 127:5 131:23 136:18 137:3 139:10,21 141:5,7 146:5,21 148:11 149:1,4,25 153:6 154:17 157:4 159:23 160:1 162:2 165:19 166:12	173:8,10 174:25 177:16 178:4 185:1,4,19 188:25 188:25 189:6,7,20 190:17 192:10,22 194:1,16,18 195:6 197:24 198:19 199:3,7,11 201:13 204:17 205:16,17 206:18 207:1 reported 92:1,5 102:3,4 135:15 144:19 reporter 5:7,18 22:25 94:16 208:5 210:7 reporting 79:25 126:10 132:17 137:24 146:14 reports 34:23 54:22 56:9 124:6 139:3 200:6,13 represent 5:13 17:20 49:18 104:20 106:10 107:19 representation 9:22 105:2 represented 162:17 representing 5:17 represents 119:5,7 request 92:20 106:3 123:12 143:17 205:18 211:9,11 requested 92:18 requests 83:15 100:25 108:12 123:25 147:12 205:22	require 62:18 required 19:11 59:21 84:6 120:21 121:6 154:2 209:25 research 40:7 51:7 51:8,23 52:2 66:1 78:10 130:20 resolution 172:12 resources 80:23 191:3 respect 9:10 10:1 10:7,25 11:2 29:12 39:4 47:6 77:16 106:19 127:22 165:16 183:2,12 respective 175:24 respond 24:15 47:11 88:4 92:20 95:8 106:6 123:24 152:8 205:13,22 responded 96:13 167:13 responding 11:6 23:7 46:2 50:1 114:14 170:10 response 24:25 47:5 55:6 83:22 92:5 93:10,21 94:22 95:5,25 96:15 99:12 101:14 106:12 108:18 109:4,12 114:13 123:12 134:8,14 138:7 responses 83:16 91:10,16 96:21 100:8,13,14 101:7 102:12 110:8 138:11,21,25
--	--	---	--

[responses - schedules]

Page 33

141:3,13,19,23 142:5,5,8,12,21 145:15 responsibilities 7:21 responsibility 66:4 147:11 responsible 7:3 8:1 64:17 responsive 22:8 25:19 98:17 99:18 100:24 143:17 153:16 169:13 201:25 restate 177:20 restated 174:23 restroom 43:3 140:10 result 76:10 107:14 117:3 177:5 185:11 205:17,18 206:8 results 24:20 29:13 31:24 50:13 110:12 186:9 187:19 retract 100:17,19 112:16 returned 209:18 revenue 35:15,23 36:24 37:15 39:7 39:10 42:2,9,20,21 43:25 54:7,9 56:5 56:18 57:14,17,18 58:3 84:2,4,8,17 84:19 85:13 87:2 88:14 89:17 90:3 90:10 92:4,15 96:5 132:20 138:15 165:2,3 194:11,11	revenues 8:8,9,14 8:19 11:15,19 12:3 30:20,22,24 33:6 35:10 37:7,9 37:10 38:4,11 39:22 44:7,21 45:10 47:15 53:17 55:3,12,22 57:4 58:10,16 59:4,9,17 60:3,13 61:6,11,20 61:23 62:2,15 63:5,9,17,23 64:11 68:18,23 69:4,10 70:24 71:6 72:20 72:25 77:7,20 84:7,9,10,11,21 85:3 86:4,6,8,11 86:12,14 87:23 88:2,3,8,10 89:2,3 89:5,13 90:13,17 91:1,4 96:6 124:3 126:4,20 128:16 132:20 136:17 143:12 164:4,5,13 164:19,25 165:3,5 165:7,25 184:18 202:19 reverse 142:2 review 127:14 155:15 197:14 201:13 209:12 210:1 211:1 reviewed 52:18 197:7 201:16 reviewing 51:3 196:5 rid 138:14 right 6:4 8:5 9:16 11:25 18:24 22:1 22:4 23:25 27:7,9 28:6 33:25 36:18	41:3 43:18 48:9 49:23 54:15 59:13 59:14 62:5 63:11 65:15 67:13,18 74:9 75:7 77:8 79:11,23 93:23 97:1,6 98:20 99:14 105:2 107:12 111:7 114:17,19 117:21 117:24 118:9 119:6,8,19,24 120:25 122:18 123:8 134:10 135:25 138:14 139:4 141:10 145:7,23,24 146:9 153:4,24 159:1 162:3 170:21 172:12 173:6 174:2 177:25 181:6 185:8 187:24 188:2,18 190:18 198:11,16 199:17 207:13,15 role 22:8 113:20 155:4 189:17 roles 204:14 roll 171:19 rolled 125:10 rollup 121:22 room 39:12 40:19 round 34:19,19 rounding 120:9 row 107:6 royalties 165:3 royalty 183:18,18 rule 15:11 89:7 rules 52:18 53:1,6 78:3 79:24 80:2 189:2 210:5 211:5	run 93:13,16 96:22 97:12 100:3 124:2,13,17 129:17 s s 3:5 4:1 7:16 66:16 209:15 211:8,8 212:3 sacrifice 193:1 sacrifices 192:24 sake 169:8 170:5 sale 32:9 sales 53:12 sap 8:2,2 sat 202:11 satisfied 147:17 savings 31:1,12 33:2 179:7 194:11 194:25 saw 51:25 55:10 157:12 159:23 189:4 206:12 saying 11:5,6 19:21 32:12 50:2 71:23 75:3 93:7,8 95:12 99:6 100:16 103:25 120:1 150:8 153:8 194:21 202:3 says 5:22 26:23 46:5 53:12 55:2 117:14 122:15 124:4 141:21 153:10 170:14,23 171:3 191:17 scenario 27:24 schedule 83:2 139:10,21 141:6 scheduled 66:2 schedules 9:21 28:9
--	--	---	---

school 67:12 schraer 205:1 scope 56:25 68:15 68:18 156:17 193:22 screen 102:25 103:11 104:23,25 screenshot 104:21 scrolled 22:22 seal 208:15 210:15 211:21 second 20:1 24:14 26:23 31:25 43:4 58:23 63:24 86:2 170:13 section 17:7 25:6,8 25:10 46:12 109:22 120:15 185:4 see 10:19 12:5,6 15:10,12 20:2 23:9 25:3,10,15 27:2 37:20,24 39:24 51:25 52:4 53:22 57:25 59:23 61:5 70:10 77:5 83:3,14 84:22 85:4 86:5,15 87:8 94:9,10,13 97:19 98:1 99:2 103:13 103:23 105:22 106:3,21 109:3,15 109:23 110:17 113:12 114:8 116:22 118:10,25 120:11 122:2,18 127:5 129:2,16 132:9,11 137:1 139:9,20,22 141:6 152:8 158:16 166:14 168:4	170:23 179:21 180:15 185:25 198:23 203:6 seeing 54:4 159:4 seeks 197:21 seen 27:5,12 32:25 33:8,12 34:1,2,5 34:22 47:2 50:8 51:14 52:21 53:3 53:7,20 55:1,7,8 59:6 60:1 70:3,4,8 72:13 91:11 148:21 156:4,11 160:18 165:1,6,7 166:1 174:12 183:23,25 184:1,6 192:20 193:15 195:1,24 segment 109:21 137:4,7 141:17 142:6,16,19 144:6 segments 128:5 select 94:9 148:18 self 63:21 sell 64:9 150:22 selling 128:10 semi 85:19 seniority 39:24 sense 51:6,9 65:9 65:12 68:6 76:20 76:23 89:16 143:4 150:23 152:7 156:7 173:25 193:14 sensitive 4:14 sentence 21:9 53:12,22 74:11,25 75:9 141:16,21 170:13,17 171:3,7 171:14 191:17	sentences 69:15 74:23 separate 23:18 25:2 41:24,24 51:2 74:15,20 95:24 123:23 sequence 188:12 sequitur 181:24 series 117:13 122:12 134:16 138:1 157:19 serious 100:22 serve 200:6 served 39:2 200:13 service 57:1 68:22 68:24 90:25 172:23 services 65:10 173:4 176:12 197:22,23 serving 6:24 22:8 set 15:2 17:13 26:7 47:15 50:18 81:2 106:2 108:7,14 151:8 175:18,19 181:12 sets 21:8 setting 77:10 80:8 80:10 87:3 settlement 172:5,8 sheet 209:13 211:7 211:10,18 212:1 sheets 70:1,2 short 43:11 81:21 82:1,8 140:17 180:19,24 shorthand 22:25 208:5,8 show 21:16 45:7 49:15 97:21 116:3	149:15 156:25 185:24 shown 21:12 29:5 74:19 77:12,14 108:21 115:8 148:13 209:16 shows 30:16,23 32:25 33:9,12 34:6 47:18 49:9 123:5 163:7 side 8:7 59:2 96:9 sign 200:6 207:16 signals 75:17 signature 208:18 209:14 signed 200:13 210:13 211:18 significant 191:3 signing 209:19 similar 69:18 100:7 142:7,19 178:14 193:19 sincerely 209:21 single 50:4 98:1,11 159:15 sir 209:10 sit 62:4 63:11 83:6 145:6 173:6 sits 203:13 206:6 sitting 9:16 59:14 110:10 127:18 situation 87:8 156:3 178:25 sixth 2:9 sizing 198:19 199:2 skill 15:2 21:7 26:7 175:18,19 181:12 skills 6:17
---	--	---	---

[slightly - state]

Page 35

slightly 15:16 174:23 small 40:13 131:14 171:24 snip 103:11 software 6:18,20 6:23 7:3,6,12 23:15 30:21 31:6 31:7,17 32:15 38:9,13 40:8 41:25 42:11 71:14 92:16 93:2,15 157:14 158:8 160:10 161:18 163:9 164:11 174:11 176:10,10 177:13 179:2 188:1,21 189:2,18 191:8,18 192:3,15 202:18 sold 32:18 solely 38:16,19 123:7 132:25 186:3 solution 69:17 188:24 189:18 solutions 5:6,8 161:20 209:1 212:1 solve 66:3 79:4 80:13 93:25 203:4 solving 61:8 79:1 188:15 somebody 43:2 84:23 99:5 181:13 190:1 204:15 somebody's 168:13 somewhat 185:21 son 81:12	sorry 70:2 sort 11:17 20:10 23:15 26:16 31:20 32:5 34:24 38:11 39:15,17 45:6 47:4 49:12 50:17 51:22 52:1 69:22 76:11 87:17 93:3 93:7 94:20 98:5 99:15 105:6 110:18,23 111:5,5 111:12,20,23 112:1,1,8 120:21 121:5 126:12 134:15 143:4,8 145:24 148:24 149:17 154:4 159:9 164:9 171:12 178:25 179:23 180:3 181:23 201:25 205:11,14 sorted 106:23,25 107:1,6 122:10 sorts 106:22 112:10 sound 39:13 sounds 57:21 135:21 181:25 source 37:19 93:24 94:4,24 113:7 122:3,15 123:1 132:24 172:20 sources 60:9 65:8 116:1,3 south 2:3,9 4:4 5:2 space 9:4 148:17 149:16 178:14 speak 36:21 91:19 166:8 203:9,16	204:4 205:23 206:23 207:3,9 speaking 10:3,6,18 38:6 51:4 72:14 83:20 84:24 91:20 116:11 128:1 129:18 146:12 205:11 206:4 speaks 192:10 special 124:1 150:14 specialty 128:5 specific 25:22 26:3 26:15 27:10 29:4 32:12,20 37:21 39:15 44:20 45:22 46:23 47:1,12,12 48:25 54:5,11 55:4 57:6,8 58:13 58:14,22 62:4,7,11 67:11 69:12 70:3 72:12 85:25 100:1 111:4 116:11 117:8 118:4 124:23 134:5 160:18 161:23 166:9 171:23 172:9 173:5,15 174:1 179:6 189:5 192:2 193:5 194:17 207:10 specifically 6:22 40:11 47:3 51:25 53:4 64:7 66:19 69:2 72:25 91:22 95:8 118:21 127:17 156:24 192:9 197:18 199:5 204:9,10,15 205:6	specificity 161:24 190:5 specifics 69:7 197:6 speculation 167:16 168:3 spend 161:1 spending 67:1 spent 39:2 66:20 190:7 199:7 spirit 153:13 split 65:12 spoke 39:12 42:3 52:13 70:10 116:4 187:16 190:1 204:19 205:25 206:1,25 207:6 spoken 114:7 spot 25:15 spreadsheet 83:19 ss 208:2 standard 16:7 75:12 150:23 173:21 174:10,15 178:7 standards 19:10 23:11 78:13 stantucci 206:22 206:23 start 9:10,11 38:2 45:16 157:9 198:18 starting 29:23 93:17 101:8,10 121:12 126:1 183:21 starts 74:12,25 75:9 132:10 162:5 165:9 state 28:18 208:1,5 210:10 211:15
--	---	--	---

[statement - take]

Page 36

statement 56:1,2,3 70:9 75:17 113:2 121:16 136:12 172:1 210:13,14 211:19,19 statements 56:8 69:24 80:2 100:19 109:21 121:15 129:21 171:14 187:14 193:13 states 1:1 4:25 63:2 74:7 121:11 137:3 192:22 stating 33:16 statistics 61:4 stemming 155:14 step 111:5 steps 106:18,19 stick 67:16 142:24 143:2 stop 111:2 stopping 40:21 straight 78:8 straightforward 112:14 strange 149:24 strategy 67:3 stream 84:17,19 85:13 87:2 88:8,9 88:14 90:3,10 91:1 92:5 132:20 138:15 streams 91:4 92:15 street 2:3,9 4:4 5:3 strike 14:20 15:18 17:11 61:10 148:9 154:15 strong 55:10,12 56:23 59:8,10,18	structure 61:10,12 61:14 124:9 134:17 struggling 105:13 111:2,9 stuck 67:16 142:23 studied 107:12 154:22 155:2 169:1 studies 156:12 161:1 195:22 study 39:3 71:8 72:17,19,24 107:23 124:18 152:18 154:25 203:22 studying 63:25 stuff 8:3 40:13 51:24 53:4 65:1 65:12 75:5,7,25 76:6,16,19 77:13 138:14 152:22 190:11 195:1 197:12 subcategory 105:25 subject 11:15 31:19 32:5 59:7 subjects 198:5 subscribed 210:10 211:14 212:21 subset 143:20 subsidiary 7:20 8:16,19 substance 24:9,20 27:13 158:18,24 171:15 172:2 substitute 20:7 31:3 185:15 187:23	subtotals 112:3 subtract 88:3 117:6 subtracted 85:4 successful 164:20 succinct 46:24 sufficient 147:16 suggest 164:8 suit 172:11 suite 2:3,9 5:3 209:2 summarize 170:2 superior 209:1 support 41:14,15 41:17,21 42:8,19 42:22 54:13,16 55:17 56:1,3,20 58:15 59:16 60:7 62:14 63:16 64:9 69:19,20,24 70:8 86:12,15 89:2 116:10 120:22 121:6 130:25 131:9 155:20 163:6 176:2,3,11 186:1 187:8,13 191:23 195:22 supports 38:13,25 40:8 42:12 suppose 39:20 50:3 supposed 45:18 130:12 150:3 153:14 182:24 sure 11:9 18:25 22:3,21 24:2 30:7 33:13 40:23 45:15 54:17 64:13 65:16 73:17 76:25 82:4 90:11 91:24 93:4 115:6,20 118:9	119:6 128:20 146:16 147:12 149:13 151:24 166:2 167:19 169:12 172:14,15 177:21 180:21 182:7 183:5 192:6 193:7 206:11 surprise 120:6 196:9 surprised 74:3 112:14 159:16 surprising 120:2 134:22 survey 55:1 surveys 61:2 swear 5:19 sweep 76:6 sworn 5:22 208:6 210:10,13 211:14 211:18 212:21 synthesizing 147:23 system 57:1 68:15 68:19 108:6,23 123:15 127:9,19 130:8 146:19 systematic 87:6 systems 8:1 52:17 80:25 81:1,6,16 t t 3:5 7:16 66:16 table 25:25 48:16 82:25 96:25 115:25 140:1 151:13 162:14,18 169:17 198:22,23 tabulate 160:3 take 4:19 40:21 43:6 64:25 78:21 81:21 85:17 90:4
---	---	--	--

[take - think]

Page 37

96:20 101:4 112:17 114:17 116:18 117:7 120:23 125:12 132:22 135:5 140:13 153:23 154:11,17 157:3 180:19 181:11 197:12 taken 1:25 4:3,22 16:21 43:11 78:17 82:8 101:12 114:22 140:17 149:7 180:24 208:10 talk 31:24 41:25 75:5 84:19 100:6 114:2 141:2 152:12 158:3,6 171:17 181:6 196:19 206:14 talked 12:3 54:17 54:20 58:25 99:1 133:2 138:8,15 168:16 179:19 189:16,17 194:13 194:19 195:3 talking 28:8 32:3,3 36:19 69:13 81:7 83:10,14 85:7 118:9 133:10 155:8 176:13 177:22 180:16 183:17 184:2 194:7 198:4,14 tangible 150:16 task 44:20 200:1 tasked 59:14 60:12 63:12 66:5 66:17	tautology 63:22 taxes 129:8 team 55:10,13 139:14 199:6 technical 21:2,5,6 39:23 40:15 51:13 52:20 technologies 70:12 72:2,4,7,18,20,22 technology 38:25 57:2 69:3,5,6 75:15 113:14,21 187:9 189:2,8 tell 13:13 29:18 30:15 43:23 51:17 52:7 57:4 58:14 71:18 75:18 77:23 79:9 83:1 91:22 143:2 148:13 158:22 173:2 189:14 190:3 201:20 202:8 203:14 206:19 telling 78:25 183:20 184:24 197:6 ten 56:16 tend 31:17 67:13 67:15 tense 58:6 term 18:17,21 29:4 57:22 150:14 159:8 194:6 terminology 18:22 86:21 93:18 184:22 terms 10:3 11:13 16:25 19:13 31:17 76:13 80:19 85:1 86:6 120:5 136:17 147:22 180:17	183:24 terrence 2:12 209:5 terry 5:16 102:14 104:5 105:7 test 18:3 testified 121:4 123:17 133:11 134:18 201:8 testify 75:25 208:6 testimony 19:19 33:17 34:5 50:24 52:24 53:7 54:5 54:23 56:11 90:8 127:14 131:2 133:9,10,14,16,20 134:20 151:17 168:21 201:15 210:6,7 211:6,9,12 text 103:8,12 104:2,3,22 108:19 110:7 111:14 tfleming 2:11 thank 6:3,5 9:19 43:8 82:19 92:11 114:19 140:14 185:8 198:13 207:16 theberge 205:3 thing 34:14 39:21 52:14 64:15 67:20 68:2,4,5,7 83:15 89:9 107:22 118:10 152:12,20 152:21 158:5 163:5 188:12 194:8,19 204:6 206:24 things 11:25 14:12 22:2 23:6 28:7 30:1,7 31:21 32:7	39:25 47:13 49:1 53:15 54:14 56:16 57:13 58:18 64:17 64:22 67:12,13,14 67:15 69:9,10,23 81:2 84:13 87:12 99:21 110:21 116:12 124:1 151:19 153:17 156:4 164:22 166:8 176:12 182:4 183:9 186:25 189:19 191:25 193:10 195:22 196:12 202:1 think 6:17 8:6 10:13 11:16 12:18 12:22 14:24 16:2 16:10,25 17:19 19:20 20:8,15,17 20:20,22 21:1,3 23:1,11 24:8,14,18 26:24 27:7,15 28:7,10,21,23 29:1 29:7,9,24,24 30:4 30:16,17,25 31:4 32:16 33:4,7 35:12 36:1,5,12 38:2,23 39:1,17 43:2 44:1,2,3,9,11 46:23 48:17 49:1 49:13,24 51:21,22 52:8 54:11,20 57:6 59:19 60:23 61:3,18 62:11,19 63:14 65:5 66:23 68:14,25 71:20,22 72:23 73:11,24 74:22 75:17 76:8 78:16 79:7,16
--	---	---	--

[think - trace]

Page 38

80:7,19 83:5 84:5 84:22 85:1,9,9 86:4,13,17 88:1,7 88:11 89:15,21 90:8,23 91:13,19 92:11 94:3,5 95:2 95:9 96:3 99:3,15 100:16,23 102:11 105:4,17,20,22 106:3,13 107:18 108:2,11 109:3,17 110:4 112:16 113:11,21 114:6,8 116:1 117:7 118:12,13,18,20 119:13 120:7 121:19 122:15 123:9 124:22 125:8,10 126:2 127:6 128:1,2 129:10 130:19,20 131:11,15 132:13 132:14 133:25 134:2,4,11 135:18 135:18 136:1 139:22 144:13,17 144:23 146:10 147:5,10 148:3,20 149:14 150:2 151:2 153:23 154:15,22 155:2 155:19 156:18,23 157:12,15,17,20 157:22,25 158:9 158:13 159:2 160:5,24 161:7,15 162:5 163:13,18 166:21 167:5,7 168:4,16 170:19 170:22,25 171:2 172:1 173:5,9,10	173:20 175:2,4,9,9 175:12,15 176:24 178:6,12,14,17,18 179:16,23 180:4 180:11 183:4,6,9 184:1,16,20 185:13 186:4 187:4,5,21 188:4 188:15,22 189:20 190:6,12,19 191:10,15,25 193:17,20 194:7 195:2 197:5 201:5 201:14,23 202:3,6 202:15 203:10,15 203:19 204:12,18 204:25 205:10,15 206:6,16,24,25 207:5 thinking 62:23 64:6 79:10 99:10 143:3 169:11 third 12:5 60:22 76:1 86:2 103:20 120:4 122:2 156:22 157:7 200:18 thirst 147:10 thirty 209:18 thought 19:3 45:13 67:3 79:8 119:1 133:16 149:5,24 150:1 159:23 169:18 thoughts 38:15 threat 172:6 three 13:19 60:18 62:10 74:22 111:14 174:21 181:9,14,20 182:3 182:3,9,17 200:15	thumb 103:9 104:9,14 ti 13:9 tie 84:16,17 176:21 tied 76:7,9 time 4:11 7:21 8:2 19:9 39:3 43:10 43:15 50:8 56:22 77:24,24 82:7,12 83:17 89:4,21 104:7 108:8 110:11 114:21 115:1 118:13,19 119:19 136:3 140:9,16,23 143:14 150:21 161:2 169:4 180:23 181:3 183:23 186:10 187:19 188:9 190:1 195:19,19 197:4 199:6 200:19 202:17 205:25 206:2 207:18 times 6:14 16:7,16 48:19 89:1 95:22 113:6 114:10 170:3 205:25 timing 127:15 tiny 131:16 title 7:23 66:22 113:19 125:9 titled 104:23 tlf 129:9 today 6:2 53:2 110:10 147:4 159:21 189:20 194:19	today's 4:12 told 35:7 38:3 42:7 130:16,17 137:14 167:12 186:5,22 188:5 189:13 190:19 193:3,11 204:2,8 tool 188:8,10,24 189:22 193:3 toolbox 60:17,18 62:9 63:14 174:22 toolkit 152:16 tools 60:16,19,24 62:11 63:15 182:10,23 187:8 top 48:11 57:11 61:7 94:12 96:25 103:22 117:11 122:19 143:24 164:25 165:25 173:2 191:5 192:22 topic 198:2,3 total 94:9 183:5 187:10 totality 198:25 totally 47:16 77:15 77:15 80:14 116:15 156:8 198:6 totals 112:6 touch 96:1,16 97:17 98:14,23 100:4 123:19 134:9 145:22 touched 160:20 touching 97:13 toured 65:2 trace 97:25 98:5,5 98:10
--	--	--	--

[traced - understanding]

Page 39

traced 94:3	try 10:12 11:25	42:24 58:18,19	108:19,20
tracie 206:14	16:25 27:25 34:20	75:14,15 87:5,7	underneath
tracked 127:10	44:15 47:17 56:13	105:18 132:12	115:25
144:20	56:15 57:25 62:6	136:15 137:6	underpinnings
tracks 129:7	62:12 90:18,19,21	151:13 155:19	18:7 181:9
transaction	99:1 101:2 105:8	161:1 165:18	understand 10:4
151:15	106:16 126:12,18	169:2 184:12	10:18 12:19,20
transcribed 210:7	128:14,22,24	196:12 197:10	15:18 16:4,6 18:4
transcript 71:21	153:24 164:18	200:15 201:2	18:4,6 19:21
208:7,7,12 209:11	182:1 196:21	tying 112:23	21:10,24 22:7,7
209:12 210:5,12	trying 15:1 17:4	type 23:16 34:25	23:22 30:8,21
211:5,11,17	18:3,5 22:7 23:10	53:4 56:25 68:15	32:2 33:21 35:18
transcripts 201:12	23:15 24:11,23	68:18 71:16 75:5	39:3 40:2,17 41:1
201:15,19	25:18,19,23 30:8	81:9 91:21 99:9	42:13 45:15 46:17
transforming	34:18 39:3 60:12	105:24 106:10	48:14 50:7,19
74:14,20	61:15 65:18 66:2	123:14 134:21	57:15 61:18 76:15
transition 171:7	73:2,11,24 75:8	143:1 146:14,21	77:25 85:23 86:23
treasury 66:23	82:24 83:23 95:7	152:21 170:15	86:24 87:18 90:17
treats 78:8	99:21 100:24	171:4,11,20	100:10 101:6
trees 90:25 91:2	101:6,19 102:10	174:16 203:5	106:8 123:15,17
trends 63:1	105:6 106:6	typed 33:18	124:8,12 126:18
trial 201:8	110:20 111:3	types 33:2 55:18	129:5 133:14
trials 201:4	117:17 118:2	71:15 124:9	134:12 136:6
tried 13:21 27:16	123:20 126:20,24	179:25 193:23	146:7 151:4,5,21
45:2 47:12 65:2	134:11 136:16	196:1,1 203:4	151:24 155:17
72:24 80:9 87:3	143:6,7 145:25	typical 71:15	156:18 159:18
96:7 99:22 123:21	148:7 151:24	typo 26:23	161:2 165:17
160:5 197:17	153:2 161:21	u	166:6 167:17
tries 129:10,11,16	166:4,7 169:12	uk 100:10 121:20	177:18 181:17
171:22	170:1,9,24 171:6	135:24,25 136:1,7	185:14 188:1
trimming 90:25	171:13 173:13	136:9,11,16	191:17 193:20
91:2	177:4 182:8,15	138:18	195:18,19 198:19
trip 65:14,21 66:2	187:3 194:4,9	ultimate 155:14	understanding
true 34:2 49:24	201:24,25 203:4	ultimately 44:1	9:14 10:12,20
53:22,24 68:12	turn 4:16 43:19	79:2 160:9 161:15	11:12,21 12:16
91:20 99:8 107:18	104:18 115:4	170:22 171:6	19:9,10 20:8
133:7 165:20	141:1	173:13 175:10	26:17,25 36:22
182:12 208:7	turned 7:24	um 119:22	37:5,13 41:16
truly 156:6	twice 14:1 200:18	unable 44:19	47:18,20 52:8,10
truth 208:6	two 12:18,18	underlying 93:24	52:16,22 53:5
	13:19 23:6 24:7	95:20 106:12	56:6 60:8 64:4

65:5 73:1,2 75:10 75:19 76:12 80:4 83:20 91:14,25 92:4 95:23 98:8 98:20 99:11 108:22 139:15 144:18 148:6 178:17 181:8 183:16,21 184:3,9 184:17,21,25 192:2 203:21 204:13,21 207:2 understood 12:3 33:10 85:6 95:4 118:2 143:7 177:24 undertake 89:11 195:14 196:6 undertook 154:25 underway 66:21 underwriter 65:11 underwriters 128:14 underwriting 41:22 56:23 60:2 60:3,14 71:16 116:25 119:7,11 126:22 135:3 164:6,12 203:19 underwritten 64:22 unfounded 150:1 unit 4:21 united 1:1 4:25 63:2 121:11 unnecessary 148:1 unquote 74:9 unrealistic 126:2 unreasonable 24:17 157:18 162:1 164:7 191:1	unrelated 85:3 unsuccessful 164:24 unusual 59:23 80:14 195:24 use 6:22 13:18 15:17 20:24 26:6 43:3 48:13,16 49:6,19,22 50:10 50:21 51:5 57:2 57:23 58:8 60:16 62:13 63:15 69:3 69:5 75:13 77:3 80:6 81:22 84:8 86:20 93:17,20 97:9,23 99:8,21,22 102:23 104:7,16 106:14 108:1 110:14 120:19,19 121:4 122:6,23 124:24 128:6 131:25 132:25 134:7 136:17 138:11,21 140:9 140:10 141:12 142:15 145:12,14 148:9 149:17 150:5 156:1,7 157:14 174:3 179:17,18 182:10 182:24 183:6 186:19 196:22 useful 166:21,22 175:9 181:16 204:16 uses 112:12 118:8 143:19 145:4 146:14 184:21 194:6 utilized 140:6	utilizes 70:20 v v 209:6 210:3 211:3 vague 18:15 47:6 152:5 155:6 168:11 valid 164:21 valuation 6:13,15 7:7 15:2,2 21:4 26:7 60:17 150:10 151:25 152:9 153:15 168:14 174:13,22 179:13 180:1 181:14 194:21 value 17:4,23 18:13 24:12 25:18 26:14 27:3 28:25 29:11,14,16,19 31:7,16 32:4 34:25 42:15,17 46:25 47:3,4 58:22 59:1 150:10 150:18 152:12,14 152:24 161:25 166:25 173:7,14 173:14,16,17,17 173:23,24 174:1,1 174:5,11,16,19 175:1,5,8,13,20,21 176:1,7,25 177:12 177:23 178:2,4,21 178:24 179:10,24 181:10,22 182:10 182:15 183:5,10 186:16 187:2,6 194:5,5,7 196:2 valued 26:11 values 13:1 26:8 31:18 174:6	185:22,24 194:22 valuing 26:10 28:23 150:15 152:15 variable 85:19 86:19 89:6,21 variety 29:23 59:25 86:8 various 167:23 vary 128:8 130:5 vendor 191:9 vendors 64:20 verbal 111:14 verduin 203:16,16 203:18,24 verified 91:10 veritext 2:22 5:5,7 209:1,7 212:1 veritext.com. 209:17 versus 1:8 4:24 31:12 33:24 34:2 115:10 video 4:18,21 videographer 2:22 4:10 5:6,18 43:9 43:13 82:6,10 114:20,24 140:15 140:21 180:22 181:1 207:17 videos 51:24 videotaped 1:14 4:2 view 29:8,13 46:8 78:3,19 79:22 148:25 149:7,17 153:9 156:21 157:6 viewable 103:11 103:12 104:21,23 104:25
---	---	---	---

[viewed - works]

Page 41

viewed 74:2 violates 153:13 violating 153:7 visiting 81:12 volunteer 115:17 <hr/> w <hr/> w 7:16 66:16 wait 22:16 waiting 36:13 waived 209:19 walk 106:18,18 110:14 137:17 140:3 want 20:7 22:7 34:7 45:15 56:17 78:12 86:24 95:10 100:15 103:13 104:1,7,16 110:25 111:21 115:21 119:6 147:9 151:5 152:13,15,17,20 153:10 156:1 158:2,5 164:5 172:15 174:17,18 176:14 wanted 66:6,12 72:11 85:23 86:22 86:22 87:16,18 90:10 98:16,17 102:24 137:22,22 180:11 wants 80:12 wartsila 7:15 8:4,6 66:16 way 13:14,15 14:4 18:7 19:16 22:23 26:3 34:3,8 35:12 35:23 36:22,24 37:5,7,12,13,15,17 38:16 41:7 44:11 47:12 61:3 62:21	67:23 71:4 72:18 72:21 73:11,25 78:7 80:20 85:21 87:16 88:4,8,13,15 90:21 92:17 93:12 95:5,9,22 96:2,12 96:16,17,21 99:3 99:15,17,17 103:16 109:20 111:1 117:4 126:8 126:18 129:2 137:25 146:25 148:3 152:25 154:10 156:4 157:24 159:11,11 161:23 162:14 163:3,6 164:2,21 167:11,14,22 169:16 174:10,24 179:13 181:16,16 182:22 184:7 190:9 191:14 193:9 199:21 204:12 ways 48:22 88:20 122:8 156:9 179:7 182:19 we've 40:7,8,21 81:20 101:22 106:3 147:3 157:23 176:24 180:20 194:19 202:20 week 64:24 67:6 weird 58:7,7 welcome 6:4 went 51:22 58:23 65:1 86:2 93:24 98:11 108:25 109:6,8 111:10 137:20 138:4	west 9:1 whatsoever 153:11 whereof 208:15 whispering 4:14 wide 86:7,8,10,11 86:13 89:1 197:2 willing 49:12 74:4 150:19 155:22 169:6 196:13,16 willingness 47:19 178:17 180:14 windfall 17:15,20 18:5,9 76:10 window 118:19 119:15,17 wireless 201:10 wish 91:21 134:21 withhold 154:12 witness 1:14 4:3 5:19 6:25 10:17 11:5 12:16 13:11 14:2,7,16 15:8 16:2,13 18:16 19:20 21:21 22:17 22:21 23:1 33:21 34:20 36:12 43:8 73:11,15,17,24 76:23 77:10 81:22 81:24 90:12 94:16 94:18 104:12 112:23 114:19 133:22 151:18 155:7 167:17 168:4,12 169:22 197:5 198:16 200:20 208:15 209:8,11 210:1,4 210:11 211:1,4,15 witnesses 130:16	witness' 209:14 wmw 1:4 wondering 20:3 102:20,25 133:13 142:22 182:13 woodward 2:17 82:16 word 14:22 15:20 15:23 16:10,15 20:7,9,24 48:4 57:21,23 63:21 70:14 76:8 102:6 107:12 175:21 184:23 words 12:18,21 13:14,16,18,21 14:7,9,11,11,17,19 16:13 27:21 41:6 74:24 76:19 84:25 93:19 127:11 180:3,18 work 12:9,13 13:7 15:22 16:24 18:8 18:24 31:2 52:17 57:25 68:10 82:5 85:12,16 104:13 116:2,13 143:1 147:16 148:6 156:2 159:25 161:17 178:22 worked 7:1 8:24 52:11 62:25 66:8 66:22 73:3 workforce 55:20 55:22 56:4 working 66:15 85:18 174:3 190:3 works 26:12 27:4 31:7,8,21 32:6 52:4 54:18,24 59:19 60:8 65:6
---	---	--	---

<p>113:21 159:11,12 202:10 worksheet 69:18 world 63:3 150:14 153:1 worth 152:22 177:5,9,11,13,17 177:19 wrap 150:25 write 21:9 70:6 75:13 83:25 87:16 97:23 126:16 128:10,13,17 writing 125:6,6 130:21,22 196:15 written 32:23 34:10 37:22 83:11 83:13 91:15 92:1 92:25 93:11,13,20 93:22 94:10 95:14 95:15,21 98:11 100:2 101:8 109:16 113:3,5 116:18 120:5 122:13,21,23 125:5 126:17 127:23,24 128:4,8 129:22 130:3,5,9 131:10,22 132:9 134:6,9,19,25 136:9 137:18 138:6,12 141:3,14 141:19,22 142:7 142:12,16,18,20 145:6,11,21 wrong 13:13,17,24 27:8 30:5,14,15 33:4,7 41:5,8 42:24 47:10 77:5 101:4 112:20 133:17 150:7</p>	<p>wrongdoing 150:12 wrongdoings 24:13 27:21 48:5 48:6 wrote 27:16 100:20 105:23 141:16 142:21 153:6 187:21 190:14,22 192:10</p> <p>x</p> <p>x 3:1,5 xs 48:15 50:21</p> <p>y</p> <p>yard 90:25 yeah 22:19,23 23:3 47:25 65:16 81:23 115:22 119:9 121:24 128:20 153:23 174:5 186:12 205:7 year 7:14 8:20 53:18 101:18 137:6 142:1 190:13 191:16 200:7,14 years 7:1 8:4 65:24 118:15 119:12 120:5 137:5 141:18,20 141:23 142:9,11 144:7 199:16,23 199:25 200:2 yield 31:23 yields 20:13 youtube 51:24 yup 82:20</p>	<p>z</p> <p>zero 28:15,20,25 29:3,10 32:23 33:13 34:10 44:25 201:6 zoltowski 3:12 11:24 19:11 21:12 21:15 23:7,12,23 24:16 25:17,22 26:2,5 27:11,18,25 28:16,22 30:5 33:5 35:2 38:22 39:1 46:25 48:23 49:11 50:2 74:3,8 74:13 75:1,4 78:17 79:7 83:22 85:14 87:2,15 88:7,10 89:17 91:14 95:3 99:22 100:16 107:14,15 107:16,25 109:25 112:15 113:4 115:10 125:22 126:19,20 131:21 132:6,13 137:20 139:9 144:2 153:5 154:18,19 157:10 158:7 159:9 160:21 162:20 163:3 164:8 165:8 165:16 167:9 171:5,21 173:9 174:14 194:6,20 zoltowski's 17:13 21:25 23:18 24:16 24:19 25:7 34:23 46:3 47:6 48:12 76:9 77:6 84:12 86:16 87:7 107:10 132:14,15 138:8 139:13,21 141:7</p>	
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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